



HHS Departmental Accounting Manual

Chapter 10-41 Credit and Debt Management

Changes to this chapter are pending the promulgation of changes to the Federal Claims Collection Standards implementing the provisions of the Debt Collection Improvement Act of 1996 by the Departments of the Treasury, and Justice together with HHS-wide debt collection regulations at 45 CFR, Part 30.

Subject: CREDIT AND DEBT MANAGEMENT

10-41-00	Purpose and Applicability
10	References
20	Definitions
30	Credit and Debt Management Policy
40	Responsibilities and Requirements for Credit and Debt Management
50	Responsibilities and Requirements to Compromise, Suspend, or Terminate Collection of Claims
60	Disclosure of Debtor Information to Third Parties - Privacy Act Considerations
70	Credit Reporting Agencies
80	Private Collection Agencies
90	Charging Interest, Administrative Costs, and Penalties
100	Deposit of Collections into General, Trust Fund, and Miscellaneous Receipts Accounts
110	Debts Involving Awards paid through the Payment Management System (PMS)
120	Collecting Debts by Administrative and Salary Offset
130	Program Deferrals and Disallowances; Audit Disallowances - Public Assistance Type Awards
140	Audit Disallowances - Other than Public Assistance Type Awards
150	Loan Asset Sales

10-41-00 PURPOSE AND APPLICABILITY

This chapter establishes Departmental credit and debt management policy, defines responsibilities and prescribes procedures for the management of its credit and debt activities, including delinquent debt, throughout the Department. This chapter also includes definitions and references and explains the principles of credit management and debt collection. It further specifies policy and responsibilities for the establishment of receivables; and the management, collection, write-off, reporting and waiver of debts associated with receivables. The policies and procedures apply to all debts owed to the Department except where expressly provided for or prohibited by another statute.

For instance, the use of credit reporting agencies, private debt collection agencies, income tax refund offset and the charging of interest, penalties and administrative costs are tools which cannot be used in debts arising from the administration of a Social Security Act Program (Titles II, XVI and XVIII) unless they involve fraud or criminal activity.

In other cases, OMB Circulars and Departmental regulations containing cost principles established under the Federal government's grants and contracting authority for use in determining the allowable costs of recipient organizations provide for a method of adjustment (recovery by reduction of future period indirect cost rates, cost allocation plan amounts or direct cost billing rates) which is not compatible with the normal receivable/recovery process.

The objective of this policy guidance is to centralize the various major credit management, claims collection and debt management regulations into an organized, comprehensive management system that establishes basic standards, requires accountability by the cognizant Departmental OPDIVS/components for meeting those standards, and provides for periodic management level reports of performance.

Departmental OPDIVS and components shall develop and implement such credit and debt management policies, procedures, systems, and practices as are necessary to:

- o Implement, for their particular programs and activities, the Departmental policies and procedures set forth in this manual; and,
- o Provide supplemental guidance for the unique characteristics of the credit and debt management activities and program specific requirements and conditions for which they are responsible.

10-41-10 REFERENCES

Following are the pertinent laws and regulations for use in carrying out debt collection and credit management policies and procedures:

Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3701 and 3711-3719).

Federal Claims Collection Standards (4 CFR 101-105).

GAO Policy and Procedures Manual for Guidance of Federal Agencies, Titles 2, 4, 5 and 7.

Privacy Act of 1974 (5 U.S.C. 552). (See particularly the rules covering privacy protection and systems of record).

Fair Credit Reporting Act (15 U.S.C. 1681).

Procedures to Offset Debts Due the United States from Benefits Payable to Debtors from the Civil Service Retirement and Disability Fund (5 CFR 831).

Office of Management and Budget (OMB) "Guidelines on the Relationship of the Debt Collection Act of 1982 to the Privacy Act of 1974."

HHS Personnel Manual, Chapter 550-9, Employee Salary Offset and Claims Collection (Under Development).

HHS Grants Administration Manual, Chapter 1-105, Resolution of Audit Findings.

HHS General Administration Manual, Chapter 4-70, Claims Collection Procedures.

Referral of Debts to IRS for Tax Refund Offset (45 CFR Part 31).

HHS Debt Collection Regulations (45 CFR Part 30).

Office of Management and Budget Circulars A-50, A-70 and A-129. (Note: A-70 and 129 compliment each other. A-70 prescribes how Federal credit should be allocated and a method for determining the cost of providing such credit. A-129 sets the standards for the management of the approved credit programs.

Treasury Financial Manual, TFM 6-8000.

Employee Agreements; Service After Training (5 U.S.C. 4108).

Installment Deduction for Indebtedness to the United States (5 U.S.C. 5514).

Advancements and Deductions (5 U.S.C. 5705).

Travel and Transportation Advances (5 U.S.C. 5724).

Also, there are numerous program unique references which are not included above.

10-41-20 DEFINITIONS

For the purpose of this chapter, the following definitions apply:

Account Receivable - Amounts owed for goods furnished and services rendered.

Administrative Cost - An expenditure or outlay of cash, other property, capital stock, or services, or the incurring of a liability incurred for the enterprise as a whole.

Administrative Costs of Collecting Overdue Debts - A charge which is assessed to a debtor to cover the Department's administrative costs of handling delinquent debts, based on either actual or average costs incurred. This charge includes direct costs (personnel, supplies, etc.) and indirect costs (both in-house costs as well as external costs, such as costs of collection agencies).

Administrative Offset - Satisfying a debt by withholding money payable by the Department to, or held by the Department for, a debtor. This definition may be extended to include the withholding of funds due from other agencies to the same debtor to effectuate administrative offset.

Audit Clearance Document (ACD) - Is an official document detailing results of an audit. The document may recommend the grantee and/or contractor to make monetary and/or non-monetary financial adjustments.

Audit Disallowance - A "disallowance" generally, is a determination that a grantee's expenditure or claim of funds is unallowable under governing law regulations, or implementing guidelines. An "audit disallowance" is a determination, which a program official takes, based on a recommendation of auditors outside the program. An audit disallowance often follows a routine audit cycle of a grantee's program.

Billing - An invoice sent to a debtor for the amount due, including interest, administrative charges and late penalties if applicable.

Commercial Debt - This covers all non-tax debts of businesses arising from loans, loan guarantees, overpayments, fines, penalties, or other causes. The term "commercial debt" includes debts owed by private, nonprofit organizations.

Consent - A written agreement by the debtor for administrative/salary offset after receiving notice of all rights and completion of all required due diligence requirements.

Consumer Debt - All non-tax debts of individuals in excess of \$100, arising from loans, loan guarantees, over- payments, fines, penalties, or other causes.

Contingent Payable - A monetary amount or reserve set aside for possible losses.

Contingent Receivable - An amount of money due from any outside sources for goods shipped or services performed that depends on chance or uncertain conditions. A reserve set aside for possible gain.

Credit Reporting Agency - As defined within Section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), a credit reporting agency (also called a consumer reporting agency or credit bureau) is any person (or organization) which, for monetary fees, regularly engages in the practice of assembling or evaluating consumer (credit) information or other information on consumers for the purpose of furnishing consumer (credit) reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer (credit) reports.

Creditor Agency - The agency to which the debt is owed.

Cross Cutting Disallowance - A disallowance, applicable to programs of more than one HHS component or Federal department, assigned to a single Cognizant Action Official who is responsible for resolving the findings on behalf of the Department and, in some cases, on behalf of the entire Federal government.

Debt - An amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, over- payments, penalties, damages, interest, fines and forfeitures, and all other similar sources.

Debt Collection Act, 1982 - An Act to increase the efficiency of government-wide efforts to collect debts owed the United States and to provide additional procedures for the collection of debts owed the United States. The additional procedures are:

- Amendments to the Privacy Act;

- Amendments to the Federal Claims Collection Act of 1966;
- Requirement that Applicant Furnish Taxpayer Identifying Number;
- Salary Offset;
- Protection of Federal Debt Collectors;
- Screening Potential Debtors;
- Disclosure of Mailing Address to Third Parties for Purposes of Collecting Federal Claims;
- Statute of Limitations with Respect to Administrative Offsets;
- Administrative Offsets;
- Interest and Penalty on indebtedness to the United States;

Report on Agency Debt Collection Activities; and

- Contracts for Collection Services.

Debt Compromise - An agreement negotiated between the debtor the Government whereby the amount of debt is reduced to effectuate settlement based on the improbability of the recovery of the full amount and other practical considerations.

Default - Failure of the debtor to satisfy the requirements of the debt repayment agreement.

Deferrals - A programmatic administrative process authorized by law or regulation which permits program officials to defer approving, as allowable, expenditures claimed by a recipient.

Delinquent Debt - A formal debt not paid by the debtor on the payment due date specified in the notice of the debt. In the case of a debt payable under an approved written repayment agreement, a delinquent debt arises in the failure of a debtor to satisfy the obligations in the agreement.

Demand Letter or Determination Document - A letter sent to a debtor giving notification that a debt is due by a certain date, and requiring a debtor to pay applicable interest, administrative costs, and/or late penalties if not paid by the date due. The debtor should also be informed of his/her appeal rights in the demand letter.

Departmental Appeals Board (DAB) - The grant appeals board is a dispute resolution body in the Office of the Secretary which is assigned responsibility for reviewing certain disputes between constituent agencies of HHS and recipients of HHS funds. A precise list of covered disputes is contained in an Appendix to 45 CFR Part 16 (the board's governing regulations). Typical disputes are: disallowances (by program officials or recommended by OIG auditors); certain terminations of discretionary grants; and cost allocation/rate disputes. The Board also handles other disputes upon request of a constituent agency. The Board receives evidence and argument, holds hearings (when necessary), and issues written decisions.

Departmental Appeals Board Decision - The appeals board issues written decisions to resolve the cases appealed to it. Each decision is issued by three Board Members. The decision is, in effect, the final action of the Department (although either side may request reconsideration if they find a mistake of law or fact). Board decisions are numbered sequentially and available to anyone who requests them. The Board maintains an index of the decisions to help constituent agencies and the public access information about Board holdings.

Departmental Appeals Board Decision "Split" - Since the cases that come before the grant appeals board typically are complex and involve an extensive record and numerous issues, the Board often issues a decision which actually is a collection of mini-decisions, so that a constituent agency may "win" part and "lose" part (or part may be sent back to the agency for further development). The Board, however, is not empowered to "compromise" claims or amounts, so that a "split" decision never involves this kind of determination.

Disallowance:

Audit or Program Disallowance - A notification as a result of an audit or program official's determination that expenditures claimed by a recipient are not allowable.

System or System Audit Disallowance - A disallowance determination of a collective nature in which a proportionate share of the disallowed amount cannot be identified to an individual award. This type of disallowance is also referred to as a cross-cutting disallowance.

Discretionary Awards - Applies to all grant programs in which the amount of the award and the decision to make the award are not

specified by law and therefore are within the administrative discretion of the granting agency.

Disposable Pay - That part of current basic pay, special pay, incentive pay, retirement pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. Agencies must exclude deductions described in 5 CFR 581.105 (b) through (f) to determine disposable pay subject to salary offset.

Doubtful Claims - Claims which are uncertain as to the exact amount involved, the liability of the parties, or the action to be taken.

Disputed Debt - A debt which the debtor contests either partially or in its entirety.

Due Diligence - The formal, established process of notifying a debtor of a debt, the period for repayment, the consequences of not paying, the opportunity for a debtor to dispute or appeal the debt and assuring the prompt collection of the debt.

Employee - A current employee of an agency.

FCCS - The Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 CFR 101.1 et seq.

Federal Claim Collection Regulations - The Federal Claims Collection Regulations were issued jointly by the General Accounting Office and the Department of Justice. The regulations prescribe standards for the administrative collection, compromise, termination of agency collection activity and the referral to the General Accounting Office and to the Department of Justice for litigation of civil claims.

Grant Suspension - Temporary withdrawal of the grantee's authority to obligate grant funds pending corrective action by the grantee.

HHS Claim Collection Regulations - The Claims Collection regulations incorporate and supplement as necessary all provision of the Joint Regulations issued by the Comptroller General of the United States and the Attorney General of the United States under section 3 of the Federal Claims Collection Act of 1966, which prescribes standards for administrative collection of civil claims by the Government as well as compromise, suspension, or termination of agency collection action, with respect to claims not exceeding \$20,000 exclusive of interest, and the referral to the General Accounting Office, and to the Department of Justice for litigation, of civil claims by the Government.

Indirect Cost Rate - The ratio, expressed as a percentage, of an organization's total indirect costs to its direct cost base (commonly direct salaries and wages). When a rate is established for a specific activity or program (e.g., research) the rate represents the ratio of the total indirect costs allocated to the activity or program to the direct base costs of the activity or program.

Late Payment Penalties - An additional monetary amount assessed against a claim of indebtedness as a result of late payments.

Miscellaneous Receipt Account - The total amount of charges collected for late payments shall be credited to miscellaneous receipt account 751499, "Miscellaneous Interest Collections Not Otherwise Classified," unless there is statutory authority to otherwise account for these collections.

OMB Circular A-50 - Provides policy guidance on the accounting and collection controls for amounts due the Government as a result of audit findings.

Paying Agency - The agency employing the individual and authorizing the payment of his or her current pay.

Pre-Offset Notice - A notice to a debtor of intention to collect a debt through the administrative offset process unless otherwise paid within 30 days from the date the notice was mailed.

Prescheduled Debt - A compromise offered a debtor to restructure the amount and due date of each payment without reducing the total debt amount owed the government.

Program Disallowance - In contrast to an "audit disallowance" (see definition above), a "program disallowance" is a determination by program officials themselves that a grantee's claim or expenditure is unallowable under governing law, regulations or implementing guidelines. Each HHS constituency has different means of conducting programmatic reviews which may result in a disallowance. In the Medicaid program, for example, the routine review of a state's quarterly expenditure reports by regional HHS Medicaid program personnel often results in a disallowance of funds claimed by the state.

Public Assistance Awards - Are awards under programs authorized under the Social Security Act where (1) grants are awarded to States and Territories, (2) the primary grantees must share in the program costs, (3) secondary recipients (individuals and organizations) of these funds are entitled to the benefit payments, and (4) the authorizing statutes require any overpayments (audit and program disallowances) during prior quarters to be adjusted against the current quarter award (for example, Sections 403(b) and 1903(d) of the Social Security Act).

Receivable - The amount recorded by an OPDIV or component as the amount owed by the debtor.

Reschedule - The establishment of new conditions to facilitate repayment of a debt.

Salary Offset - Administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee.

Suspension of Collection - The temporary cessation of collection activity of a debt for a specified period of time. The debtor is still required to pay the debt.

System of Records - As defined within Section (a)(5) of the Privacy Act of 1974 (5 U.S.C. 552a), this term means a group of any records under the control of any agency from which information is retrieved by the name of an individual person or by some identifying number, symbol, or other identification uniquely assigned to the individual.

Termination of Collection - The temporary cessation of collection activity by or on behalf of the government because the debtor disputes, litigates or shows unwillingness to compromise the debt.

Treasury Schedule 220.9 - A "Report on Status of Accounts and Loans Receivable Due from the Public" for the quarterly reporting of outstanding receivables.

Waiver - The cancellation, remission, forgiveness, or non-recovery, of a debt in whole or in part based on legal authority and regulations.

Workout - The process for consideration of rescheduling or restructuring terms and conditions of a debt to facilitate repayment.

Write-off - Elimination of a receivable evidenced by an indebtedness which will not be collected due to unsuccessful collection efforts, death, disability, bankruptcy, or the statute of limitations.

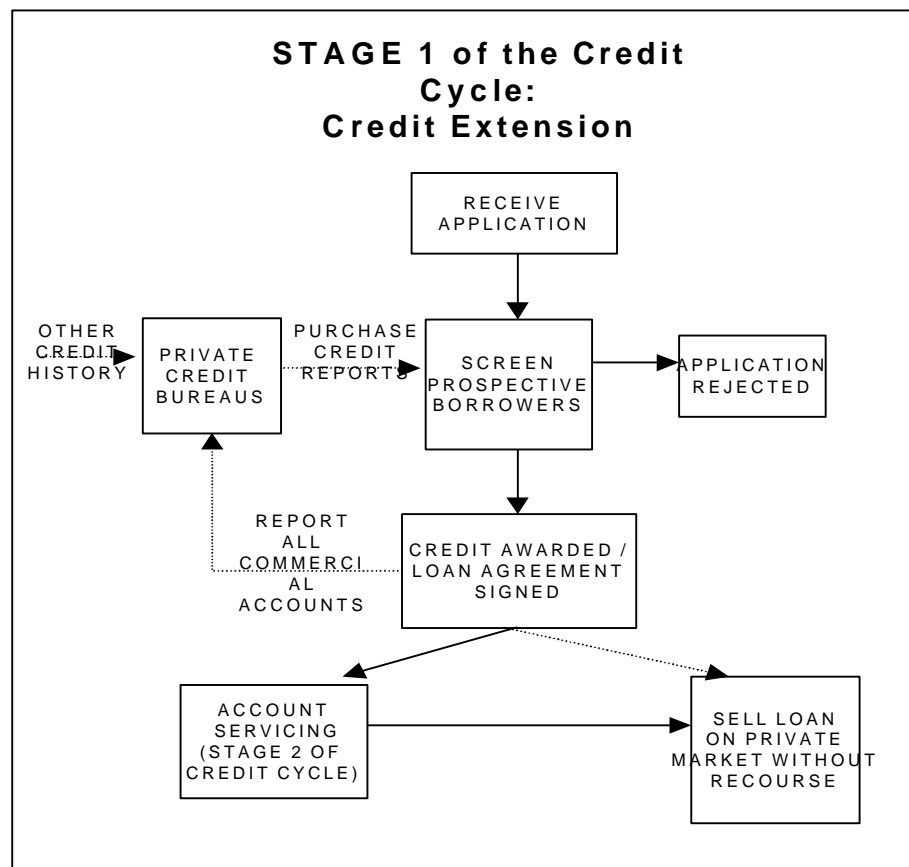
10-41-30 - CREDIT AND DEBT MANAGEMENT POLICY

- A. Credit Management Standards. Effective management of the Department's debts associated with its diverse programs and activities requires the establishment of consistent, business-like debt management approaches and systems to protect the government's financial interest. This will assure that:
- o Amounts due the Department are identified promptly.
 - o Accounts receivable for all debts are established on a timely basis.
 - o Debtors are treated fairly.
 - o Collections are pursued rigorously to the full extent permitted by law.

Therefore, Department-wide policy must be observed by all personnel involved in credit and debt management activities. Departmental policy is that the following nine major credit management standards specified in OMB Circular A-129 shall be an integral part of each OPDIV's/component's credit and debt management activities:

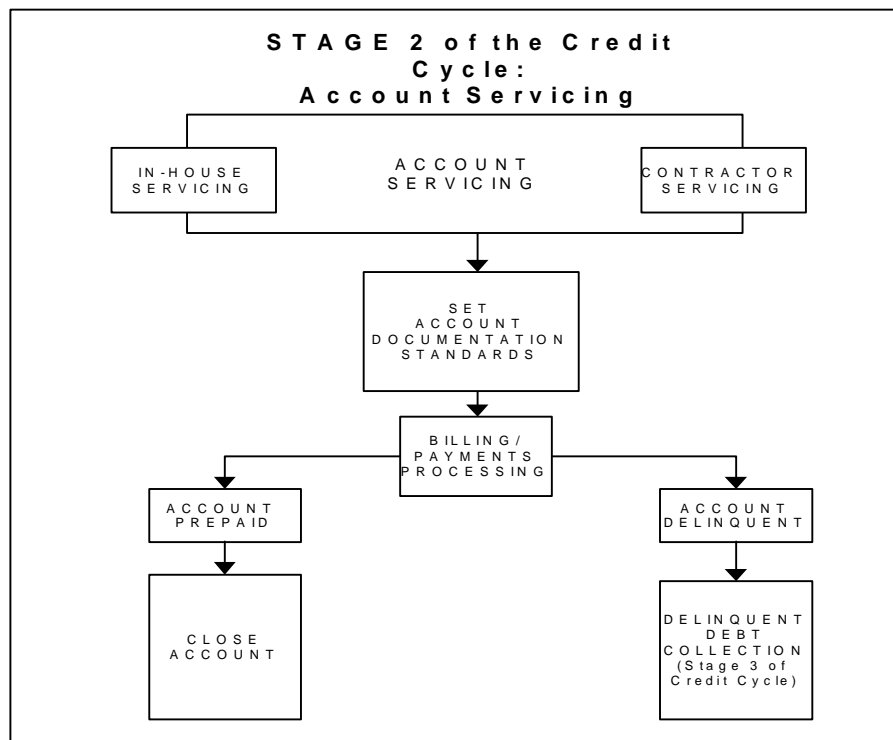
1. Prescreening - Bad loans and receivables can be decreased by establishing an applicant's credit- worthiness prior to credit approval.
 - a. OPDIVS and components shall purchase credit reports to prescreen all applicants where they would serve a useful business purpose and where creditworthiness is a condition of the loan or receivable.
 - b. Past "procurement performance" is to be part of these reports (e.g., applicant may have failed to deliver on a contract or did not perform or complete as expected).
 - c. Prescreening is mandatory where appropriate. Applicants delinquent on a Federal debt must resolve the issue with the creditor agency before the OPDIV/component can process the application, contract, etc.
2. Credit Bureau Reporting - Debtors who default on a Federal loan shall be reported to private sector credit bureaus.
3. Account Servicing - OPDIVS and components shall maximize their credit management capabilities by:
 - (1) Contracting out servicing functions or by in-house automation, whichever is more cost efficient.
 - (2) Annually assessing the risk by estimating the potential losses associated with the portfolio (Exhibit 10-41-U).
 - (3) Developing internal reporting systems to provide information on results of credit program operations.
4. Private Debt Collection Services - OPDIVS and components shall contract with private sector collection services to follow-up on delinquent debts which are more than six months old and are not in an internal work group or are not already referred to the Department of Justice.
5. Refund Offsets - OPDIVS and components shall report individual debtors to IRS for offsetting against tax refunds to recoup delinquent debts.
6. Federal Salary Offsets - OPDIVS and components shall implement offsets as soon as possible against employees for their delinquent debts.

7. Litigation - All defaulted accounts more than six months old shall be assigned to the Department of Justice for litigation unless they are at a collection agency or in an internal workout group. However, before going to litigation it should be recognized that termination of collection efforts or compromise of the amount due may be appropriate alternatives to litigation.
 8. Write-offs - As a result of bankruptcy, statutes of limitations, death or disability, some delinquent debt will never be collected. OPDIVS and components shall follow the procedures described in Section 10-41-50 E.
 9. Loan Asset Sales - Loan asset sales may be more efficient than long-term servicing. OPDIVS and components shall enhance their loan documentation and servicing to meet commercial standards. OPDIVS and components shall follow procedures described in Section 10-41-150.
- B. The Credit Management Cycle. The application and inter-relationship of these policies to the three stages of the credit management cycle for loans (awards, servicing, and delinquent debt collections) are illustrated below.
- Stage I of the Credit Cycle: Loan Awards
- o In the loan awards stage, OPDIVS and components shall: (1) **prescreen loans** to determine creditworthiness and to check on any negative credit history by using private sector credit bureau reports, and (2) **report to private sector credit bureaus** information on all commercial accounts and delinquent consumer accounts. In addition, applicants for contracts and grants must also be screened to determine financial responsibility, and (3) **establish standards for loan documentation and implement in accordance with OMB Circular A-129**.



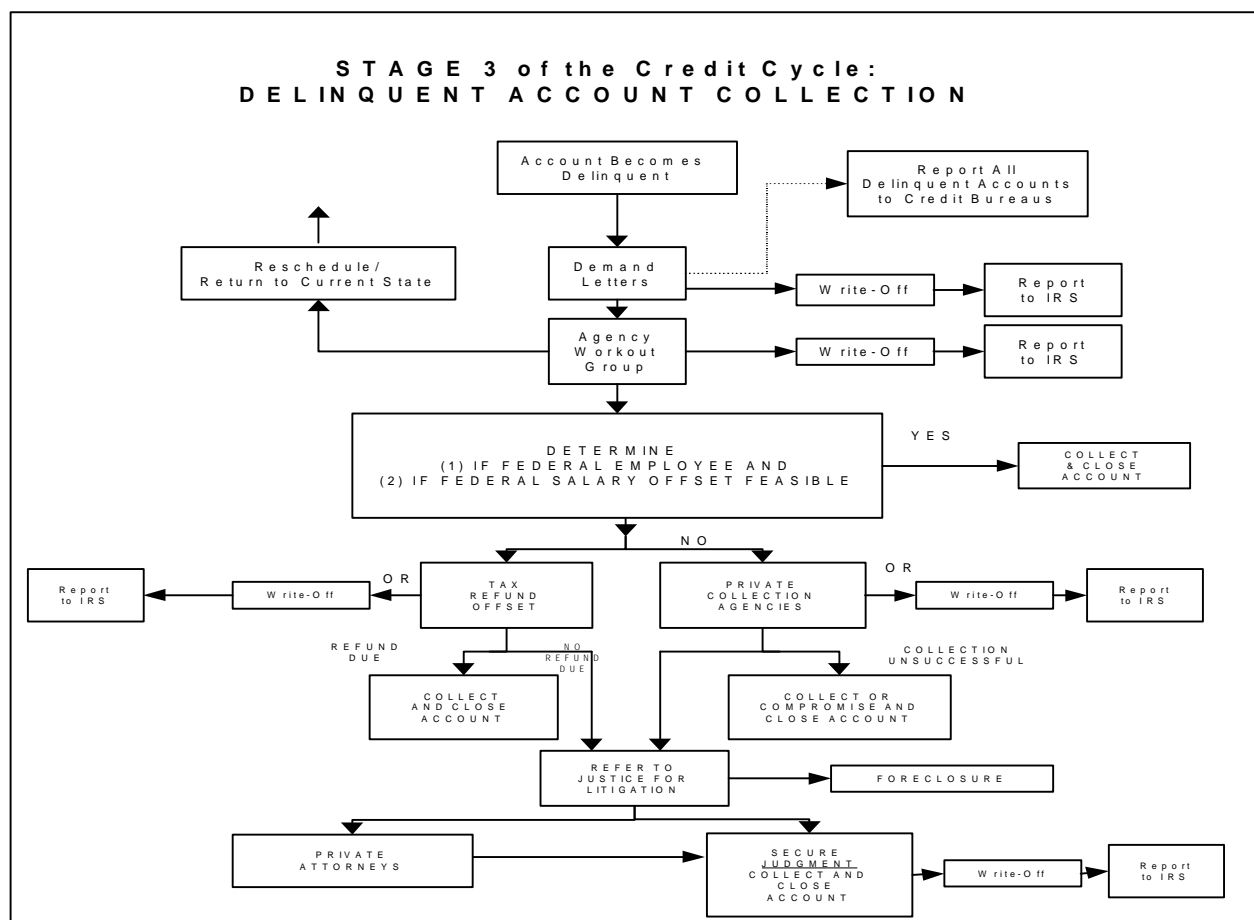
Stage II of the Credit Cycle: Loan Servicing

- o In the loan servicing stage, OPDIVS and components shall (3) evaluate options of cross-servicing and contracting out rather than to continue to **upgrade and automate loan servicing and** collection operations, either through in-house efforts or through contractors. In addition, **standards for loan documentation should be established** and must be implemented in accordance with OMB Circular A-129.



Stage III of the Credit Cycle: Delinquent Loan Collection

- o In the loan collection stage, OPDIVS and components shall apply a wide range of collection techniques to manage delinquent debt. These include: (4) using **private collection services** to go after accounts more than six months delinquent; (5) submitting information about delinquent debtors to the IRS so that debt may be recovered through **income tax refund offset**; (6) matching delinquent accounts against Federal employee rosters so that debt may be recovered through **Federal employee salary offset**; (7) referring delinquent accounts to the Department of Justice for **litigation** when the use of other debt collection tools is unsuccessful; (8) **writing-off** delinquent debt accounts that will never be recovered due to bankruptcy, disability, or other reason; and, (9) selling loan portfolios, through OMB's **loan asset sales initiative** (See Section 10-41-150).



- C. Delinquent Debt Reduction Goals, Directives and Annual Credit Management Improvement Plan. Each OPDIV/component is required to develop and implement an annual credit management improvement plan which describes the strategies for implementing the OMB credit management standards and for meeting its OMB assigned delinquent debt reduction goals through implementation of the above Departmental policies.
1. Reduction of the amounts of delinquent debt owed the United States is a major goal of the Administration's credit management program. Major initiatives include:
 - a. Delinquent debt targets are established for each OPDIV and are not to be exceeded at the end of the fiscal year.
 - b. Delinquent debt targets have been formally integrated into the OMB's budget review process. OMB has revised Circular A-11, Section 42, Exhibits 42a and 42b to gather information on Federal debt and the resources needed to support credit management and debt collection.
 - c. Delinquent debt amounts reported on the 42a require three-years estimates in addition to the most recent fiscal year end actuals; these estimates will be considered as each OPDIV's/components proposed delinquent debt targets.
 - d. Based on the information OPDIVS provide in Exhibit 42a, OMB in consultation with Treasury, will review the OPDIV credit management and debt collection plan through the budget review process.
 - e. Targets for collecting delinquent debt and write-offs will then be established and provided to the OPDIV through the Budget Passback process and will again be published in next year's Management Report.
 - f. OMB and Treasury will monitor progress toward achievement of the delinquent debt targets.

Therefore, it is critical that Exhibits 42a and 42b are carefully developed, with the involvement of OPDIV/component debt collection officials as well as budget staff, and they should be coordinated with information provided through Treasury Report 220.9 (Schedule 9s).

2. OPDIV/components beginning on March 31, 1989 with one or more credit programs with and-of-year receivables with \$50 million or more must issue directives that assign to individuals and organizations credit management responsibilities for all loans. The directives must:
 - a. Assign overall credit management responsibility, as well as responsibility for each phase of the credit cycle. Responsibility should be vested in policy officers with access to the OPDIV/component head and should be designated the OPDIV/component credit management official.
 - b. Specify the credit management actions to be taken to ensure full implementation of the policies set forth in OMB Circular A-129.
 - c. Assign oversight responsibility to the debt collection official to ensure the preparation of timely and accurate data in accordance with the requirements of A-129 and Circular A-70 on delinquent, and rescheduled loans, claims for guaranteed loans, loan losses, and write-offs.
 - d. Establish a monitoring system for comparing results to performance goals established by OMB.
 - e. Identify the individual and organization to be responsible for the credit financial management system and the submission of the plan and the budget estimates required by OMB Circular A-127, "Financial Management Systems."
 - f. Establish, if appropriate, credit boards to coordinate credit management activities and to ensure full consideration of credit issues by all interested and affected organizations. Representation on these boards should include, but not be limited to: the senior official for program offices with credit activities; the OPDIV/components Debt Collection Official; the OPDIV/components management office; the budget officer (if budget is not part of the management office); the OPDIV/components General Counsel; and the OPDIV's Inspector General in an advisory capacity. The board should recommend to the OPDIV/component head an annual credit management plan, and should meet at least quarterly to review

progress and problems in accomplishing credit management objectives. The Board should provide a year-end assessment of results and needed follow-up actions to the OPDIV/component head.

3. Credit granting OPDIV/components must prepare an annual Credit Management Improvement Plan that describes their strategy for effectively managing all phases of the credit cycle -- credit extension, account servicing and portfolio management, and delinquent debt collection. The plan must ensure OPDIV/component compliance with the standards set forth in A-129 the plan must:
 - a. Provide a credit management strategy for each program with and-of-year receivables of \$50 million or more.
 - b. Be in accordance with the format provided in Exhibit 10-41-R "Outline of Requirements for Credit Management Improvement Plans".
 - c. Be submitted to HHS in time for the Departments annual budget submission (OMB Circular A-11).

**10-41-40 RESPONSIBILITIES AND REQUIREMENTS FOR CREDIT AND DEBT
MANAGEMENT**

- A. General. The Federal Claims Collection Act (FCCA), as amended (31 U.S.C. 3711), places the responsibility for collecting debts owed to the government on the Federal departments or agencies whose individual activities give rise to the debt. Within the Department, OPDIV Heads, Regional Directors, and the Deputy Assistant Secretary, Finance are responsible for assuring that financial management controls and systems are in place for adequately managing the Department's credit and debt activities. In addition, accounting systems must provide for promptly recording, collecting, reporting and controlling applicable interest, penalties, and administrative costs due the Department on delinquent debts. Rigorous standards must be set and enforced by accounting officers in documenting receivables, actions to collect, compromise, or suspend claims, and referring uncollectible receivables to claims collection officers and the Department of Justice. Thus, it is important that the step-by-step collection process contemplated by the FCCA and Debt Collection Act be accomplished in order to expedite the collection process and reduce Federal government borrowing costs and costs of operations. Where appropriate, these standards must include the use of private debt collection agencies and credit reporting agencies and the use of other Federal agencies and Departmental components to assist in collecting debts. This would include, for example, using the Internal Revenue Service's tax refund offset procedures. In addition, where cost effective, commercial debt servicing firms should be utilized to reduce the Department's debt administration costs.

Appraisals for property serving as collateral for direct or guaranteed loans must be conducted in accordance with A-129. By July 1, 1991 OPDIVs/components must determine which property transaction because of size or complexity require a state certified appraisal. An overview of the basic responsibilities and requirements for credit and debt management, including claims collection is illustrated below. It is not intended to cover all specific aspects of these activities or the subtleties of OPDIV/component specific programs.

OPDIV/components must ensure that their credit and debt management policies and procedures incorporate the program specific requirements of other statutes, agreements and regulations where this chapter does not cover the uniqueness of any program operations.

B. Preaward Responsibilities and Requirements. Successful debt management and collection begins prior to the initial making of the loan, scholarship, grant, contract, etc.

1. To the extent feasible and when appropriate, before approving an initial grant, loan, or other agreement, each OPDIV/component shall:
 - a. investigate the financial integrity and current financial capability of the recipient to carry out the activity for which the award is to be made;
 - b. determine whether the recipient owes money to the government (by certification where appropriate); and check whether the recipient is in default on payment or performance; and
 - c. request each potential recipient to disclose whether any present officers of the organization were ever employed or connected in a official capacity with any organization which defaulted on a debt to the government. (Federal Register October 20, 1987 and 45 CFR Part 76).
2. OPDIVS/components shall request each potential recipient to furnish along with the application:
 - a. its employer identification number,
 - b. the name of each officer, his/her social security number, home and office addresses, and
 - c. the name, current address, social security number of each officer authorized to accept service of process involving any legal action against the corporation.

However, the OPDIV/components are required by law to advise the recipient that this information is relevant and necessary to accomplish the purposes of the FCCA and; that, although furnishing this information is voluntary, failure to provide it may make evaluation of the application difficult. (Privacy Act, 5 U.S.C. 552a(e); P.L. 93-579s7.)

3. Credit reports shall be obtained from credit reporting agencies for potential recipients of Federal loans, loan

guarantees, grants, contracts, scholarships, traineeships, or other awards to determine the extent and status of their financial obligations to the government, including whether they are presently delinquent on any debts to the government.

- a. Credit reports shall be obtained where they would serve a useful business purpose, taking into account such factors as the amount and nature of the award (i.e., discretionary or mandatory), ongoing relationships and prior experience with the recipient, and the existence of other information.
 - b. Except where required by law or approved by the head of the cognizant OPDIV/component, no award of Federal funds shall be made to a recipient, and
 - c. No loan shall be guaranteed or insured by the cognizant OPDIV/component on behalf of a borrower who is delinquent on a debt owed to the government or has been debarred or suspended by any Federal agency until:
 - o The delinquent debt is brought current; or
 - o Satisfactory arrangements are made between the debtor and the Federal agency responsible for collection of the delinquent debt; or
 - o The Federal agency which debarred or suspended the applicant consents in writing to the award.
 - d. Credit reports on potential recipients shall be obtained after selection but prior to the actual award. Where there is a continuing relationship between the recipient and the OPDIVs/components, credit reports need only be obtained once and updated periodically.
 - e. See Section 10-41-70 for further information concerning the use of credit reporting agencies.
4. At the time the award is made, the awarding office must inform each applicant that any resulting payback obligation must be satisfied, advise the applicant of

Federal debt collection policies and procedures, and require the applicant to sign an appropriate statement, similar to the example found in Exhibit 10-41-A that certifies that such information has been received and is understood.

- a. The signed statement shall be maintained as part of the OPDIV's/component's official file.
 - b. For those recipients where there is a continuing relationship it is only necessary to provide such notice and obtain acknowledgement one time from the recipient.
 - c. The statement does not constitute the notification required by the Debt Collection Act or the Deficit Reduction Act as meeting specific prerequisites prior to using certain debt collection techniques such as referrals of credit information to credit bureaus, IRS income tax refund offset, etc.
5. Pre-screening of applicants filing for benefits under entitlement programs should ensure that each applicant meets all the criteria for such benefits and require that the applicants submit the proofs necessary to substantiate the entitlement criteria. This might include:
- a. Proof of Age
 - b. Proof of Disability
 - c. Income Earnings
 - d. Eligibility Verification
 - e. Death Certificate
 - f. Veteran Status
 - g. Verification of Addresses
 - h. Determination of Marriage Relationship, etc., etc., etc.

There are a number of additional items that can and should be added to the list of above. The OPDIV/component is responsible for establishing the criteria and assuring that the criteria are met by the applicants.

- C. Debt Management System Responsibility and Requirements. Each OPDIV and component must establish firm control over its programs and other activities which may give rise to debts. It must implement a debt management system that assures that the existence, amount, and the status of every debt is readily identifiable. Immediately upon determining there is a debt, each OPDIV/component must initiate comprehensive, timely, forceful, and persistent collection activities. These efforts should be directed towards the earliest possible collection of the debt or, in the failure to collect, toward the proper documentation of the claim for appropriate disposition under the provisions of the FCCA. In order to meet its responsibility for debt collection, each OPDIV/component shall:
1. Assign to an organizational unit the responsibility for all billing, collection, and due diligence activities.
 2. The responsible OPDIV organization will establish written procedures to assure:
 - a. Prompt identification of all debts as they arise.
 - b. Verification of the amount of each debt and the name and address of each debtor.
 - c. Immediate notification to the cognizant finance office to begin the billing process and to record, account, and report monies owed and/or collected.
 - d. Collection of debts on or before the due date.
 - e. Assessment of interest, penalties, and charges for administrative costs of collection.
 - f. Reporting information to credit bureaus where appropriate.
 - g. Reporting indebted contractors to the Department of the Army for inclusion in the "Army Hold-up List," in accordance with the HHS claims collection regulation (45 CFR Part 30).

- h. Use of private collection agencies.
- i. Collection by salary or other administrative offset, when appropriate.
- j. Development of workout plans, including rescheduling of payments, if necessary.
- k. Use of credit reports to evaluate the potential success of proposed workout plans, to identify other Federal awards as a potential source for collection offset, and to identify any resources of the debtor that may be available through litigation.
- l. Periodic matching of delinquent debtor files against files of the Office of Personnel Management (OPM), the Department of Defense (DOD), and other control sources, to identify present and retired Federal employees who are delinquent.
- m. Foreclosure and liquidation of collateral.
- n. Referral of delinquent accounts for income tax refund offset in accordance with guidance provided in 45 CFR Part 31.
- o. Referral of administratively uncollectible accounts to the Department of Justice (through the appropriate HHS Claims Officer) for disposition.
- p. Referral of discharged debts to the IRS for consideration as taxable income, as set forth in Chapter 10-70 of the Departmental Accounting Manual.

D. Billing and Collection Responsibility and Requirements. The cognizant OPDIV/component must:

- 1. Promptly establish accounts and loans receivable for all debts due it.
- 2. Make prompt demands to each debtor for repayment by means of:
 - a. Written communication.

(1) The initial bill or payment demand letter shall be sent by certified mail,* return receipt requested no later than 5 business days after a debt has become payable (as required by 31 CFR 206.3) and shall inform the debtor of the:

(a) Basis of the debt and the specific rights the debtor may have to seek review within the agency, an opportunity to inspect and copy agency records pertaining to the debt, etc. (See 45 CFR Part 30 for specific due diligence requirements.)

(b) Date by which payment is due; usually not more than 30 calendar days from the date that the initial demand letter was mailed or hand delivered.

(c) Applicable standards for assessing interest, penalties, and administrative costs (see section 10-41-90 of this chapter).

(d) Use of other appropriate administrative collection techniques that may be considered to effect repayment (e.g., reporting delinquent accounts to credit reporting agencies, use of private collection agencies, IRS tax refund offset, etc.)

(e) The demand letter should be marked first demand, second demand or third demand. The mailing envelop should be stamped "Address Correction Requested".

* Note: Employee delinquent debt requires only one written 30-day demand letter, after which salary offset will commence. (See section 10-41-120-D of this chapter). OGC has advised that the use of certified mail for employee debt arising from the personnel/payroll system is not required. Certification of the mailing is adequate

to establish receipt by the addressee. The alternate mode of hand delivery, however, should be documented by a receipt of delivery.

- (2) If payment is not received by the due date, a second, stronger written request for payment of a debt shall be made within 30 calendar days following the initial due date by certified mail, return receipt requested.

This request shall include a notice that information concerning the delinquent account will be reported to credit reporting agencies.

- (a) In accordance with the Debt Collection Act of 1982, OPDIV/component finance offices must notify delinquent consumer (individual) debtors that information concerning their accounts will be referred to credit reporting agencies. For purposes of this requirement, a consumer debtor means an individual as defined in the HHS Privacy Act Regulations, 45 CFR Part 5b. The notice must state that:

- o The debt is overdue.
- o The account will be reported to a credit reporting agency in no less than 60 days from the date of the notice unless payment is received.
- o The amount of the debt that will be reported.
- o The debtor has the right to appeal the accuracy and validity of the debt during the 60-day period.

- (b) With respect to commercial debts, there is no statutory requirement to inform the debtors that information concerning their accounts will be referred to credit reporting agencies. However, each

OPDIV/component should notify delinquent commercial debtors that the information concerning their accounts will be referred after a certain period of time (e.g., 30 days) unless payment is received. Debts of state and local governments, Indian tribal governments, other public institutions such as state institutions of higher education, and state hospitals, along with foreign debts, should not be reported.

- (3) If payment still is not received and the alternative remedies discussed below are not available, a final (third) stronger demand letter shall be sent in 30 calendar days (or less when appropriate) from the date of the first follow up letter, by certified mail, return receipt requested, indicating that if there is no response, the case will be prepared for referral for litigation. If alternative remedies as discussed in section 10-41-40G.1. below are available, they also shall be pursued.
 - b. Telephone calls. Telephone contact with debtors is an extremely effective technique for having delinquent accounts brought current. In all cases where written communications have not been successful and the debtor's telephone number can be obtained, the fiscal office shall immediately contact the debtor by telephone to attempt collection of the receivable.
 - c. Personal interviews, if necessary and feasible.
3. Ensure that demand letters are mailed or hand-delivered on the same day that they are actually dated.
 4. Respond promptly to any communication from the debtor, within 30 calendar days, and advise debtors who dispute the debt to furnish available evidence to support their contentions.
 5. Maintain a written record of all collection actions taken on the debt.

6. Collect payments and deposit them immediately to the appropriate account. Credit card applications will be maximized to collect debt, fines and fees, including Freedom of Information activities.
 - a. Payments that are received by OPDIV/component offices other than finance offices shall be forwarded immediately (i.e., same day) to that office.
 - b. Partial payments shall be first applied to administrative cost charges, then to outstanding penalty charges, then to accrued interest, and then to principal (in that order), in the absence of a contrary statute.
 - c. If a debtor owes more than one debt and designates how a voluntary payment is to be applied among those debts, that designation shall be honored.
7. Implement agreements with credit reporting agencies by establishing a system for the transfer, storage, protection, and distribution of account information to other OPDIVS/Federal agencies.
 - a. OPDIVS/components shall refer information concerning delinquent accounts of individuals, and all commercial accounts, to credit reporting agencies.
 - b. The system for referring account information shall be able to:
 - (1) Identify which debts will be referred, the point in the collection process when this will take place, and what information will be disclosed.
 - (2) Ensure that the debt is valid and the information is accurate, complete, timely, and relevant.
 - (3) Provide internal procedures to permit a delinquent individual debtor, as provided for by regulation, to appeal the accuracy and validity of information concerning debts reflected in credit reports.

- (4) Accept corrections and report them to credit reporting agencies on a timely basis consistent with the Fair Credit Reporting Act.
 - 8. Report indebted contractors to the Department of the Army for inclusion in the "Army hold-up list," in accordance with the HHS Claims Regulation (45 CFR Part 30).
 - 9. Refer delinquent accounts of individuals to the IRS for income tax refund offset in accordance with guidance provided in 45 CFR Part 31. Referral does not relieve the OPDIV/component of its responsibility to continue collection efforts through the other means provided for in this manual.
 - 10. All contacts with the debtor should be on a courteous but firm and businesslike basis. The following collection practices must be avoided in communications with the debtor:
 - a. Anonymous or harassing telephone calls at a time known to be inconvenient to the debtor.
 - b. Impersonating an attorney or law enforcement official.
 - c. Obtaining information under false pretenses.
 - 11. Collection efforts shall be prompt since delay often reduces the likelihood of collection, and the procedures should not be burdened by unnecessary internal clearance or review requirements.
- E. Responsibility and Requirements for Installment Payment of Past Due Debt. Unless specifically provided for by law, regulation, or the original written agreement, installment payments of past due debts should not be initially encouraged. No references should be made in correspondence with the debtor to the possibility of installments unless the debtor raises the question, or there is an indication that such an approach will result in the eventual recovery of the debt which otherwise would be lost, or be less costly to the government than alternative approaches. Even then, debtors should be encouraged to borrow from private sources to repay their Federal debt in lieu of seeking an installment repayment arrangement. If installment payments are to be considered, the cognizant finance

office may, if appropriate, seek advice from the program or other office whose activities gave rise to the debt. However, the following requirements shall be observed:

1. Satisfactory evidence of the debtor's inability to pay in a single payment shall be obtained.
2. All installment payment plans shall provide for interest, applicable administrative costs and late penalty charges.
3. Installment payments shall be sufficient in size and frequency to liquidate the debt, including interest, in the shortest period possible, i.e., normally within three (3) years.
4. Installment payments shall be first applied to administrative cost charges, then to penalty charges then to accrued interest and then to the principal, in the absence of a contrary statute or contractual type agreement stated in the award or other document.
5. Provision shall be made for the entire debt to become due and payable immediately, at the option of the government, if any installment is not paid when due.
6. If installment payments are to be made over more than a six (6) month period, the terms and conditions should be in writing and signed by both parties, and security for the debt should be obtained if possible.
7. An automated billing system shall be used for all installment payment plans where feasible. For employee installment agreements the appropriate automated mechanism is salary offset.

(This section does not pertain to those debts which are payable by installment pursuant to the original agreement giving rise to the debt.)

F. Responsibility and Requirements for Locating Lost Debtors. If a bill or demand letter is returned undeliverable, the cognizant OPDIV/component office shall make a diligent effort to obtain the debtor's current address.

1. Two of the most efficient sources for this information are:

- a. Internal Revenue Service (IRS). IRS has the most complete locator file in the government which provides a means of locating debtors under Project 719, Taxpayer Address Requests. IRS will disclose the debtor's address to Federal agencies who have debt collection responsibilities under the FCCA. For information about how to participate in Project 719, contact the Director, Service and Design Division, Internal Revenue Service, Department of the Treasury, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.
- b. Private Credit Bureaus. The use of credit bureau's locator service to obtain a debtor's current address can be very productive. In addition, credit bureaus can provide financial information on the debtor.

It is necessary that all OPDIVS/components enter into agreements with credit bureaus through the use of the General Services Administration contract for this service.

- 2. Other available locator sources which should be utilized as appropriate include:
 - a. Telephone and business directories.
 - b. Local Postmasters.
 - c. State motor vehicle divisions, i.e., automobile title and license records.
 - d. State and local government agencies, such as licensing bureaus for doctors and dentists.
 - e. Secretaries of state for corporations (see Exhibit 10-41-B).
 - f. Present or former employers, including Federal departments and agencies.
 - g. Professional associations of which the debtor may be a member, i.e., the American Medical Association, American Dental Association, etc.
 - h. Chambers of Commerce or other business associations.

- i. Relatives, acquaintances, and coworkers of the debtors.
 - j. Credit Reports.
- G. Responsibility and Requirements for Alternative Remedies for Nonpayment of Debt. Whenever it appears that further demand would be futile (for example, where the debtor explicitly refuses to pay, or clearly cannot pay) and prior to referring any delinquent debt to a collection agency, the cognizant OPDIV/component finance office shall consider whether alternative remedies would better protect the government's interest.
 - 1. Alternative remedies include:
 - a. Promptly filing suit. If the claim is to be referred for civil action for recovery of the debt, the properly documented claim file should be forwarded to the cognizant OPDIV/component claims collection officer for referral to the appropriate litigation official.
 - b. Attachment of property, the removal of assets or the dissolution of a corporation are alternatives that can be employed to protect the government's interests. The cognizant OPDIV/component finance office may recommend one of these to the appropriate Claims Officer.
 - c. Filing a claim in bankruptcy court. If this is contemplated, the cognizant OPDIV/component finance office shall so advise the program or other office whose activities gave rise to the debt and the appropriate litigation official.
 - d. Offsetting the debt against pay or other amounts due the debtor in accordance with section 10-41-120 of this chapter.
 - e. Taking action, in coordination with the program or other OPDIV/component office whose activities gave rise to the debt, to liquidate any security or collateral for the debt and apply the proceeds towards the amount due as provided in the security instrument, unless the cost of disposing of the collateral will exceed its value or special

circumstances dictate otherwise. Where there is a surety or insurance company, payment shall be demanded from that company unless sale of collateral is expressly required by statute or contract. Proceeds remaining after payment of the debt and the costs (including interest) of collection must be returned to the debtor.

- f. Seeking the debarment or suspension of the debtor from eligibility for financial assistance and procurement contracts, awarded by other OPDIVS/ components, or other Federal agencies for any inexcusable, prolonged, or repeated failure to pay a debt. Delinquent debtors should be advised of the possibility of debarment or suspension. The specific sanctions are governed by the Departmental regulations set forth in 45 CFR Part 76 (Debarment and Suspension from Eligibility for Financial Assistance) and by the Federal Acquisition Regulations 48 CFR 9.4 (Debarment, Suspension, and Ineligibility). The procedural requirements set forth in those regulations must be followed before the sanctions can be implemented.
- g. Taking any other actions when necessary to protect the government's interest.

H. Responsibility and Requirements for Debt Referred to Claim Officials and the Department of Justice. The Federal Claims Collection Standards provide that referrals to the Department of Justice for litigation should be made within one year following the initial billing date.

- 1. To comply with this one (1) year limitation, OPDIVS/components shall:
 - o Take no more than two (2) months following the initial billing date to complete routine due diligence activities. Deferment, grace, appeal, and other periods during which debt repayment is not required are excluded from the standards for the timely processing of delinquent debts. In the case of programs which provide such periods, the time elapsed before completion of administrative collection efforts and referrals to Department of Justice will be measured from the dates on which the deferment, grace, or appeal periods end.

- o Turn over delinquent debts (after completing due diligence activities) to a private collection agency, except where alternative collection efforts are likely to be more successful (e.g., debts owed by employees where salary offset can be used, where the need for litigation is apparent, or where there is no possibility of collection).
 - o Ordinarily, any debt which the collection agency is unable to collect should be returned to the applicable OPDIV/component finance office after six (6) months.
 - o Allowing four (4) months for the finance office's own due diligence efforts and six (6) months for the collection agency will permit completion of administrative collection efforts in about ten (10) months following the initial billing date. That should leave more than enough time to complete the delinquent debt process (as discussed below) and, where appropriate, refer administratively uncollectible debts to the Department of Justice within one year.
2. Complete the delinquent debt process by referring administratively uncollectible debts to the appropriate OPDIV/component claims official within one (1) month after ceasing administrative collection efforts (i.e., within one (1) month after the collection agency returns delinquent debts or it otherwise appears unlikely that administrative collection efforts will be successful).

Although OPDIV/component finance offices are required to take persistent and aggressive actions to collect all debts, those efforts may not be successful in some cases.

If the OPDIV/component finance office is unable to collect a debt or bring a debt into current repayment status under an installment arrangement, one of the following actions must be taken in accordance with section 10-41-70 of this chapter and the delegated authority described therein (unless the debt was referred to a collection agency which has not yet completed its collection efforts):

- a. Compromise the debt (i.e., settle for less than the full amount due by mutual agreement between the debtor and the creditor).
 - b. Suspend collection efforts temporarily as agreed to by the government and the debtor.
 - c. Terminate collection efforts and write off the debt.
 - d. Refer the debt to the Department of Justice (DOJ) for litigation or other appropriate action. In this event, the cognizant OPDIV/component finance office must send a final demand letter to the debtor indicating that the debt will be referred to the DOJ if payment is not received (see Exhibit 10-41-C).
- I. Exclusion of Debts Arising under the Social Security Act. The FCCA does not override other laws or their implementing regulations, which may apply to certain types of debts or programs. Excluded are debts owed by entitlement program beneficiaries under Titles II (Federal Old-Age Survivors, and Disability Insurance Benefits), XVI (Supplemental Security Income), and XVIII (Medicare) of the Social Security Act. Management of these debts is covered under the Social Security Act and under common law.
- J. Statute of Limitations for Filing Suit. The Federal statute of limitations will normally bar filing suit 6 years after the cause of action accrues. It starts running again with every payment on account or written acknowledgement of the debt signed by the debtor. Time does not count so long as the debtor is outside the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico or while the debtor is exempt from legal process (28 U.S.C. 2415, 2416). However, OPDIV/components should consult with appropriate General Counsel staff to determine the specific requirements applicable to a given debt or type of debt since there are a number of variations and exceptions.

**10-41-50 RESPONSIBILITIES AND REQUIREMENTS TO COMPROMISE,
SUSPEND, OR TERMINATE COLLECTION OF CLAIMS**

A. Delegation of Authority. Title 31 U.S.C. Sec. 3711(a)(2) authorizes the Secretary to compromise, suspend, or end collection action on a claim of \$20,000 or less (excluding interest) that has not been referred to another executive or legislative agency for further collection action. The Comptroller General has this same authority when claims have been referred to it for further collection action. Additionally, only the Comptroller General may compromise a claim arising from an exception made by the General Accounting Office.

1. The Secretary delegated the authority to compromise, suspend, or terminate claims to the Department Claims Officer, the Director, Business and Administrative Law Division, Office of the General Counsel and to the Commissioner, Social Security Administration and the Administrator, Health Care Financing Administration.
2. This authority delegated to the Department Claims Officer was redelegated to the following officials:

Director, Litigation and Claims Branch, Office
of the General Counsel, and the
Assistant Secretary for Health

3. Pursuant to the same authority, specific redelegation dated July 4, 1979 was also given for the compromise, termination, or suspension of claims up to \$800 to the following officials:

Assistant Secretary for Management and Budget
Assistant Secretary for Personnel Administration
Assistant Secretary for Human Development
Services
Assistant Secretary for Health
Inspector General
Director, Office for Civil Rights
Director, Office of Child Support Enforcement
Director, Division of Public Health Service
Claims
Claims Officer, Family Support Administration
Claims Officer, Social Security Administration
Claims Officer, Health Care Financing
Administration

B. General Procedures.

1. When the cognizant OPDIV's/component's finance office has exhausted all the collection efforts described in this chapter and has been unable to collect a debt or work out an installment repayment agreement within ten (10) months from the initial billing date (or less if it is evident that another payment demand would be futile), the finance office will refer the debt to the component's claims collection officer along with a recommendation to either suspend collection efforts, compromise the amount of the debt, terminate collection action, or forward the case to the Departmental Claims Officer or the Department of Justice.
2. The OPDIV claims officer is responsible for the suspension, compromise, or termination of claims exceeding the delegated authority of its component claims collection officers and for referrals to the Department of Justice for litigation. The component's recommendation to the OPDIV claims officer shall be accompanied by a summary of the amount of and basis for the debt, the efforts made to collect the debt, and the basis for the recommendation (with supporting documentation, if appropriate) consistent with the provisions below.
 - a. If the amount of the debt is such that the component's claims officer has the delegated authority to take final action on the recommendation (for amounts of \$800 or less), he/she shall promptly either:
 - o Issue a written determination approving or disapproving the recommendation and send a copy to the finance office, or
 - o Return the case to the finance office with a memorandum explaining the need for additional documentation or collection efforts.
 - b. If the amount of the debt exceeds the delegated authority of the component's claims officer (and in all cases where the recommendation is to forward the case to the Department of Justice for litigation),

the recommendation, along with appropriate documentation, shall be sent to the OPDIV claims officer for appropriate action.

- c. Claims for amounts less than \$600 will not be referred to the Department of Justice for disposition unless the case is precedent setting or involves fraud or unusually critical issues.
3. When administratively uncollectible debts are referred to the OPDIV's claims officer, he/she shall promptly take one of the following actions.
- a. Issue a written determination approving the component's recommendation to suspend collection efforts, compromise the amount of the debt, or terminate collection action if the amount of the debt is \$20,000 or less. A copy of the determination shall be sent promptly to the cognizant component.
 - b. Forward the case to the Department of Justice in accordance with applicable GAO/Department of Justice guidelines if:
 - o The amount of the debt exceeds \$20,000 and the recommendation is made to compromise, suspend or terminate collection efforts,
 - o The statute of limitations is about to expire, or
 - o Litigation to collect the debt is recommended.

The OPDIV claims officer shall promptly notify the cognizant component of the referral.

C. Compromise of Debt Claims.

- 1. If the cognizant OPDIV/component claims officer determines that collection in full is unlikely after exhausting all collection efforts described in this chapter and all remedies available under specific program legislation and regulation, an effort may be made to settle the case by compromise in accordance with the criteria set forth below (subject to the limits on delegated authority for that purpose).

- a. The compromise of debt claims as discussed in this chapter refers to the settlement of a debt for less than the full amount determined to be due and payable under applicable legislation, regulations, and/or written agreement.
 - b. Compromise of debt claims does not refer to negotiations with debtors that are conducted prior to establishing accounts receivable for the purpose of determining the amounts actually owed.
2. OPDIV/component claims officers may compromise debts within the limits of their written delegated authority if the full amount cannot be collected.
- a. Claims may be compromised when:
 - (1) The full amount cannot be collected within a reasonable period of time by enforced collection proceedings because the debtor cannot or will not pay the full amount, taking into account one or more of the following factors:
 - o age and health of debtor;
 - o present and potential income;
 - o inheritance prospects;
 - o concealment or transfer of assets;
 - o availability and value of collateral and other assets through sale or litigation;
 - o exemptions available to debtor under state or Federal law;
 - o availability of assets or income. If the file does not contain up-to-date credit information (not more than 3 months old) as a basis for evaluating a compromise proposal, it should be obtained from such sources as credit bureaus, a verified statement from the individual debtor, and, in the case of a corporate debtor, balance sheets and profit and loss statements; and

- o risks in litigation in relation to size of debt, such as difficulty in proving the case in court because of dispute as to facts or legal issues, availability of witnesses, or litigation costs.
 - (2) There is a bona fide dispute as to the facts or the law. The amount accepted in compromise should fairly reflect the probability of full or partial recovery in the event of litigation based upon expected testimony of witnesses, the adequacy of evidence supporting the claim and other practical considerations.
 - (3) The cost of further collection efforts or litigation is likely to exceed the difference between the proposed compromise amount and the full amount of the claim. This criterion carries greater weight for small claims.
- b. Installment payments of a compromised amount shall be discouraged. However, if the facts of the case indicate that an installment arrangement is necessary to collect the compromised amount, the compromise agreement shall provide in writing that on default, the amount of the debt, with accrued interest, penalty, and administrative cost charges, less payments made, shall become due and payable.
 - (1) Installment payments should be large enough and made frequently enough to liquidate the claim in not more than 3 years.
 - (2) Before installment payments are agreed to by the cognizant OPDIV/component official, a current credit report (not more than 3 months old) shall be obtained and a determination shall be made regarding the ability of the debtor to make the necessary installment payments.

- (3) Interest penalties and administrative costs must be charged in accordance with this chapter.
- (4) Security shall be obtained for the installment debt where possible.
- c. In the case of joint and several debtor liability for a debt, a compromise with one debtor shall neither release the remaining debtors nor determine the amount required from the other debtors jointly and severally liable on the claim.

D. Suspension of Collection Actions.

- 1. Collection efforts may be suspended temporarily by claims officials who have written delegated authority to do so, under the following conditions:
 - a. If the debtor is missing and cannot be located after diligent efforts to locate missing debtors, and there are reasons to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim.
 - (1) The Federal statute of limitations will normally bar filing suit six (6) years after the cause of action accrues. It starts running again with every payment on an account or written acknowledgement of the debt signed by the debtor. Time does not count so long as the debtor is outside the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico or while the debtor is exempt from legal process (28 U.S.C. 2415, 2416). However, OPDIVS/ components should consult with the appropriate General Counsel staff to determine the specific requirements applicable to a given debt or type of debt since there are a number of variations and exceptions.
 - (2) Even in those cases where a debtor cannot be located, action shall be taken to: (1) liquidate security; (2) enter judgment on a confess-

judgment note; and (3) to the extent authorized, set off the delinquent debt against money owed the debtor -- notwithstanding the statute of limitations -- in accordance with applicable Federal Claims Collection Standards and the HHS claims collection regulation.

- b. If the debtor has no current ability to pay, and at least one of the following conditions exists:
 - (1) future prospects for recovery are favorable and there is no statutory bar; future offset is possible;
 - (2) the debtor agrees to pay interest during the period of suspension; or
 - (3) the debtor is seeking a waiver or administrative review of the debt under a statute that prohibits collecting the debt prior to considering the debtor's request for the waiver or administrative review (see 4 CFR 104.2(c)).

Wherever feasible, written acknowledgement of the debt, a partial payment, or a judgment should be obtained to forestall application of the statute of limitations.

- (4) the debtor cannot be located.

A system must be developed and maintained by the cognizant OPDIV/component finance office to ensure that suspended claims will be reviewed periodically, and that appropriate action is taken either to continue collection efforts, litigate, or write off the claim.

E. Termination of Collection Actions.

- 1. Termination means that no further collection efforts are undertaken and that the debt is written off as uncollectible, under the provisions of the Federal Claims Collection Act, the Federal Claims Collection Standards and the HHS claims collection regulation. Claims officials may terminate collection action on debts within the limits

of their written delegation of authority when they determine that such debts are uncollectible because one or more of the following conditions is present:

- a. The government cannot collect or enforce collection of any significant sum from the debtor and will not in the future be able to collect from the debtor, taking into account any unliquidated security, the judicial remedies available, the debtor's future prospects, and the debtor's exemptions under state and Federal law. The factors to be considered in determining inability to pay include:
 - (1) age and health of the debtor, inheritance prospects,
 - (2) present and potential income or assets,
 - (3) possibility of concealed, or
 - (4) or illegally transferred assets.
- b. A collection agency has been unable to collect the debt and has returned it with sufficient documentation to demonstrate that the debt is uncollectible.
- c. The debt is discharged in bankruptcy.
- d. The debtor is deceased and has left no estate.
- e. The corporate debtor has been dissolved and there are no corporate assets or security and whereabouts of the officers and directors are unknown.
- f. There is a statutory bar and prospects for offset are remote.
- g. Cost of collecting will exceed recovery.
- h. The claim is legally without merit.
- i. The claim cannot be substantiated by evidence.

Budgetary treatment of write-offs is discussed in Exhibit 10-41-T.

- F. Documentation of Compromise, Suspension and Termination Actions.
OPDIV/collection actions and the basis for compromise, termination, or suspension of collection actions taken must be documented in detail and retained in the appropriate claim file.
- G. Documentation of Administratively Uncollectible Debt Claims to Claims Officer.
1. If all attempts to recover a debt in excess of \$800 have proven futile, the claim file shall be sent to the OPDIV claims officer. Before referring the claim, debtors must have been provided all required due diligence and given factually supportable written responses to any issues raised by the debtor regarding the validity of the debt or any requests for waiver of the debt pursuant to specific program regulations.
 2. All pertinent documents, including but not limited to the applicable items below, should be placed chronologically in a claim file for reference by the OPDIV claims officer. Those documents include:
 - a. For debts that are expected to be referred to the Department of Justice:
 - (1) Certificate of Indebtedness (see paragraph 10-41-50G.4. below).
 - (2) Claims Collection Litigation Report and associated Justice Department letters (see paragraph 10-41-50G.5. below).
 - (3) Statement of Facts (see paragraph 10-41-50G.6. below).
 - b. Assistance application or contract proposal, etc.
 - c. Agreement or contract signed by the debtor or other evidence which establishes the basis for the debt owed.
 - d. Basis for computation of the debt (including, if appropriate for grant-related debts, copies of Financial Status Reports).

- e. For audit or program disallowance cases:
 - (1) a copy of the original audit report establishing the disallowance and revised Audit Clearance Documents (ACD's) and disallowance letters, and
 - (2) where corporate dissolution is alleged, verification of corporate status from the Secretary of State and/or information regarding any of its successors in interest.
- f. Documentation of all pertinent actions taken by the component to collect the debt, including demand letters and all correspondence to and from the debtor or the debtor's representative.
- g. Where appropriate, correspondence concerning prior approval requests and/or evidence that the appeals process and other administrative review processes have been exhausted.
- h. Evidence of debtor's current financial status.
- i. For debts that are not expected to be referred to the Department of Justice, the claim file should be forwarded to the OPDIV claim officer, with a covering memorandum which contains:
 - (1) A concise statement of the facts and circumstances of the debt, how it rose, how it was computed, and the date it became due.
 - (2) Citations to and copies of (as necessary) all applicable laws, regulations, and procedures pertinent to the debt.
 - (3) A recommendation regarding the action to be taken by the claim officer, e.g., termination, suspension, or compromise.
- 3. In order to legally enforce collection of a debt, there must be information in the claim file regarding the current financial status of the debtor. Generally, the Department of Justice will not litigate any debt, however valid, if there is only a remote opportunity to collect the judgment obtained against the debtor. Such information is also necessary to support any compromise, suspension, or termination action.

Accordingly, each uncollected claim file must have current (within 6 months) financial information about the debtor's income, personal liabilities and assets.

- a. Current financial information can be obtained from an individual debtor by requesting completion of a Financial Statement similar to the one used by the Department of Justice (see Exhibit 10-41-D).
 - b. In addition, the claim file must include a current credit report (not more than 6 months old) on the debtor and audited balance sheets of corporations or agency investigative reports. Credit reports shall be obtained from one of the credit bureaus included in the latest GSA Federal Supply Schedule.
4. A Certificate of Indebtedness must be prepared for each administratively uncollectible debt case being referred to the Department of Justice. This certificate must be signed by an appropriate program official who has personal knowledge of the facts of the case. The official certifies to the basis of the debt, the gross amount owed, any credit applied, applicable interest rate, exact balance owed and how it was computed, and the statutory authority under which the payment was made and is recoverable.
- a. The preparation of this certificate is essential before the U.S. Attorney will initiate any civil action against the debtor. It serves a dual purpose:
 - (1) The U.S. Attorney notifies the debtor of the debt by mailing this certificate with a covering letter advising that failure to respond will result in civil action.
 - (2) If the debtor does not respond, this certificate is then used as a legal document to prove the validity of the debt to the satisfaction of the Federal judge.
 - (3) (A sample Certificate of Indebtedness is shown in Exhibit 10-41-E and should be modified for individual program needs.)

- b. The certificate should not include the collection efforts made or the debtor's responses. Such information should be contained elsewhere in the file, such as in the narrative report and the checklist of collection actions taken.
- 5. The Department of Justice with the support and cooperation of the GAO, has developed a standard Claims Collection Litigation Report (CCLR) as well as a "short form" CCLR for use in the referral of debt claims to the Department of Justice. The standard CCLR shall be used for referring debts which exceed \$5,000 and the short form shall be used for referring debts of \$5,000 or less.
 - a. A CCLR shall be prepared and transmitted, within 11 months after the date on which the debt became delinquent, to the OPDIV claims officer. The other items listed in section 10-41-50G.2 above shall be transmitted along with the CCLR.
 - b. The CCLR requires that the cognizant OPDIV identify an individual who will be responsible for answering questions or resolving problems that may arise concerning the claim. With respect to the debts referred to the Department of Justice, the individual should be responsible for administering the programs or activities giving rise to the debt, and must be knowledgeable about the history, facts and details of the claim. The employee's name, title, complete mailing address, and FTS telephone number must be given.
 - c. Copies of both the standard and short form of the CCLR as well as detailed information and instructions may be obtained from the OPDIV claims officer.
- 6. Claims referred to Justice require a statement of facts that should fully describe the debt, any computations used to derive it and the circumstances around it in a short paragraph form. The statement of facts identifies the debtor; his/her relationship to the Government, i.e. individual, grantee, contractor, etc.; the exact amount of debt (when the total debt is comprised of more than one part each part is to be separately identified) along with

the appropriate citations to statutes, regulations, contracts, vouchers and checks; how the debt was discovered; the actions(s) taken to collect or compromise the debt, dates and amounts of any partial payments and any reaction(s), reasons for nonpayment on the part of the debtor. The statement of facts is in effect a short though concise historical abstract of the claim to date in chronological order. Full and complete case documentation supporting the Statement of Facts will be in the documented file. This includes copies of correspondence (other than the demand letters) between the debtor and the RCC concerning the debt and copies of documents which establish the Government's position on any issue raised by the debtor.

7. The OPDIV claims officer will thoroughly review the claim file upon receipt to determine that all the required collection actions have been taken and that the debt has been properly documented to support either legal action or administrative disposition.
 - a. In appropriate cases, the OPDIV Claims Officer will attempt to obtain payment from the debtor.
 - b. Should there be any deficiencies in the documentation of the claim, additional information will be requested and/or the claim will be returned for further evidence.
 - c. The OPDIV claims officer will make a determination regarding the administrative disposition of the debt claim pursuant to his/her authorized delegation and the standards of the Federal Claims Collection Act or refer it to the appropriate U.S. Attorney's Office for the institution of a civil action against the debtor.
8. The OPDIV claims officer will:
 - a. Refer to the Department of Justice any debt claim:
 - (1) in excess of \$20,000 which has no potential for collection through further administrative or legal action, with a recommendation to suspend, terminate, or compromise.

- (2) which the OPDIV/component has been unable to collect, suspend, or terminate after aggressive efforts have been taken as discussed in this chapter, but which are potentially collectible through legal action.
- b. Retain all records on the referred claim until the case is closed.
- c. Make such referrals within 12 months after the initial billing date unless there are compelling reasons to delay the referral (such as where collection efforts were temporarily suspended and then resumed without success).

H. Write-off and Close Out Procedures.

1. The cognizant OPDIV/component finance office shall promptly identify and remove uncollectible accounts from receivables. Timely write-offs will improve accounting for the costs of programs, and will allow management to focus efforts on accounts most likely to be collected. Accounts shall be written-off when:
 - a. Collection action has been terminated; or
 - b. A judgment has been obtained and has failed to produce full or partial collection. However, the failure of a criminal judgment to result in repayment does not prevent an agency from pursuing civil or administrative collection actions.
2. Written-off accounts shall be closed, and the debtor's account ledgers removed from active agency files. Appropriate adjustments shall be made in the allowance for uncollectible accounts.
3. Despite write-off, cognizant OPDIV/component finance offices should maintain subsidiary records of individual accounts if it appears that the debts may be collected subsequently by offset against future benefit claims or other means.
4. Amounts that are both discharged and written-off shall be recorded with debtor identifying information in an IRS referral log, accumulated for the calendar year, and

forwarded to the IRS in January of the following year on IRS Form 1099 G.

- a. Under the Internal Revenue code, Section 61(a)(12), income from the discharge of indebtedness is to be included in the gross income of a taxpayer.
- b. In general, income from the discharge of indebtedness arises in the year in which an obligation is forgiven or satisfied at less than its face value.
- c. The debt must meet all of the following criteria:
 - (1) Be covered by the Federal Claims Collection Act of 1966, as amended (see Section 1-5-110 of this manual);
 - (2) Be owed by an individual, a partnership, or a sole proprietorship;
 - (3) Total \$600 or more, excluding interest;
 - (4) Not be in dispute or discharged in a Title XI bankruptcy case; and
 - (5) Be no longer collectible because the time limit in the applicable statute for enforcing collection expired during the year, or some form of formal compromise agreement was reached under which the debtor was legally discharged of all or a portion of the obligation.
- d. This requirement does not apply to debts discharged in return for service. Further, any award or portion thereof, which constituted taxable income to the recipient when originally made, shall not be subject to these provisions.
- e. The amount of discharged indebtedness to be reported in section 5 of Form 1099 G is the principal balance of the indebtedness, excluding interest penalties or administrative costs, which became uncollectible during the calendar year immediately preceding the reporting date.

5. OPDIV/component finance offices shall reinstitute collection action on closed-out accounts if there is subsequent evidence that a debtor has new ability to repay.
6. The accounting records must reflect as accurately as possible the value of the accounts and loans receivable that are expected to be collected. The records will show the sum of the individual accounts under collection with an offsetting allowance to provide for those accounts which may not be collected in the future.

Since it is not practical to separately evaluate each account an estimated blanket allowance must be established for each type of receivable (account receivable, loan, accrued interest). Various factors must be considered in calculating the allowance (1) the doubtful accounts based upon the aging process (2) statistics on past experience of various types of programs (3) volume of new accounts being estimated (4) future trends of credit conditions (5) losses that may occur because of new laws or administrative decisions, etc.

The allowance for loss calculation will be recorded each accounting period so that a charge to expense for the potential bad debts is effected in the period the loss is incurred rather than in the period the debt is determined to be uncollectible. When a determination is made that an account is uncollectible the account or loan receivable is written off and the allowance for loss is reduced.

At least annually each allowance account must be analyzed to see if the balances reflects the best estimate of the amounts which may not be collected. If there is evidence that the balances are either inadequate or excessive, a correction is in order.

The expense for the bad debt may be funded based upon the periodic entry to establish the allowance for loss or at the time the debt is written off.

I. Exclusions and Exceptions.

1. The Federal Claims Collection Act does not pertain to the processing of:
 - a. Any debt claim in which there is an indication of fraud or misrepresentation or which is based, in whole or in part, on violation of the Federal antitrust laws. The Department of Justice alone has the authority to compromise, suspend, or terminate collection efforts for these types of claims. Any such claim should immediately be forwarded to the appropriate claims official with a covering report summarizing the essential facts and evidence which support a finding of fraud, misrepresentation, or antitrust violation.
 - b. Any claim arising from an exception made by the GAO in the account of an accountable officer, including a claim against the payee. GAO will provide guidance in such cases. Only the Comptroller General or his designee may compromise such claims.
2. The Federal Claims Collection Act and implementing regulations preclude a Federal agency from subdividing claims to avoid the monetary ceilings discussed in this chapter.
3. The provisions of this chapter are directed primarily at recovering money on behalf of the United States, and circumstances for disposing of government claims at less than their full amount. Nothing contained in this chapter is intended, however, to deter an OPDIV/ component from demanding the return of specific property or from demanding, in the alternative, either the return of the property or the payment of its value.
4. The Federal Claims Collection Act and implementing regulations do not preclude a Federal agency from:
 - a. Disposing of any debt pursuant to the provisions of statutes or regulations other than the Federal Claims Act. For example, under the National Health Service Corps Scholarship program, an obligation or indebtedness may be waived or suspended for the reasons listed in its implementing regulations

(42 CFR 62.12). If a Federal agency exercises such authority in regard to a particular debt within its jurisdiction, the debt no longer exists and the Federal Claims Collection Act is not applicable.

- b. Using any other available administrative option that may be permitted under contract or law to recover the debt, such as bringing a claim for the return of specific property.

**10-41-60 DISCLOSURE OF DEBTOR INFORMATION TO THIRD PARTIES -
PRIVACY ACT CONSIDERATIONS**

- A. General. The Preamble to the Debt Collection Act of 1982 (P.L. 97-365), which amended the Federal Claims Collection Act of 1966, clearly states congressional intent "to increase the efficiency of government-wide efforts to collect debts owed the United States and to provide additional procedures for the collection of debts owed the United States." Among the "additional procedures" are those which authorize agencies to disclose the names, debt information, and (in certain instances) the addresses of individuals from agency systems of records.

In order to facilitate this kind of disclosure and promote the use of debt collection techniques commonly used by the private sector, the Debt Collection Act contains provisions which directly affect the Privacy Act of 1974. The Privacy Act is the primary statute controlling disclosures and use of Federal information about individuals.

This section discusses the disclosures of debtor information from systems of records to third parties and specifies the Privacy Act requirements which must be met prior to making those disclosures. Requirements in disclosing IRS-obtained taxpayer mailing addresses to third parties are specifically addressed.

- B. Relationship of Privacy Act to Debt Collection Activities. The Privacy Act (P.L. 93-579) was enacted to safeguard individual privacy from the misuse of Federal records and to provide that individuals be granted access to records concerning them which are maintained by Federal agencies.

1. 5 U.S.C. Section 552a(b), as enacted by the Privacy Act and amended by the Debt Collection Act, contains the following twelve (12) provisions under which agencies could disclose personal information from systems of records without the prior written consent or request of the subject individual:
 - a. To other persons in the Department who have a need to know in the performance of their duties;
 - b. Where required under the Freedom of Information Act;
 - c. For a routine use (third-party disclosure);
 - d. To the Bureau of Census for statutory purposes;
 - e. For statistical purposes if no identifiable personal information is transmitted;
 - f. To the National Archives in case of historical value of records;
 - g. To another Federal, State, or local agency for a civil or criminal law enforcement activity;
 - h. Under a showing of compelling circumstances affecting the health or safety of an individual, with notification of disclosure sent to the last known address of the subject individual;
 - i. To either House of Congress or to its committees;
 - j. To the General Accounting Office in the performance of its duties; and
 - k. When ordered by a court of competent jurisdiction.
1. To a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 3711 (f) "to encourage repayment of an overdue debt."

Except for the above explicit disclosure provisions, no Federal agency is permitted to disclose for any purpose any record which is contained in a system of records without either the prior written consent of the subject individual or prior agency publication of a "routine use" notice and opportunity for public comment on the notice.

2. The Debt Collection Act also contains a statutory authority to satisfy the conditions under the Privacy Act, 5 U.S.C. 552a(b)(3) ("routine use" disclosures) permitting disclosures of taxpayer mailing addresses to debt collection agencies, as well as disclosures of debtor information to effect administrative or salary offsets.
3. Any disclosure of information from a system of records under a routine use not previously published requires the publication of a new routine use notice in the Federal Register for a 30-day public comment period. The initial notice covers all subsequent disclosures under the routine use and no further publication is required unless revisions to the system notice are made. The Department maintains a central system of records for payments to and collection from individuals maintained in all OPDIV and component accounting systems. This system of records is published as 09-90-0024. Each OPDIV/component that has established other systems of records in support of debt collection action must submit for publication in the Federal Register its own routine use notices to meet this requirement.

C. Disclosure of IRS Taxpayer Mailing Addresses to Third Parties.

1. Routine Use Disclosures.

Section 8 of the Debt Collection Act amended section 6103 of the Internal Revenue Code of 1954 to permit the Secretary of the Treasury to disclose the mailing address of a taxpayer for use by officers, employees, or agents of a Federal agency for purposes of locating such taxpayer

to collect or compromise a Federal claim against the taxpayer in accordance with section 3 of the Federal Claims Collection Act of 1966 and in order to have a credit report prepared.

2. Restrictions on Use and Redisclosure.

Under these provisions, OPDIVs may disclose a record from the system to request a mailing address from the IRS. The IRS may disclose such mailing addresses to the requesting OPDIVs who in turn can disclose the addresses to claims personnel in their effort to collect debts and to credit reporting agencies only for the purpose of obtaining a commercial credit report. Other transfers of addresses from the IRS are prohibited.

3. Safeguard Provisions.

To ensure that Federal agencies and their agents do not misuse addresses obtained from IRS, the Debt Collection Act further amends section 6103 of the Internal Revenue Code of 1954 to make the safeguards provision of that section apply to these recipients as well. The effect of this provision is to make applicable the penalty provisions of the Internal Revenue Code, 26 U.S.C. 7213(a)(1).

These provisions require that "Any violation . . . shall be a felony punishable upon conviction by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution, and if such offense is committed by any officer or employee of the United States, he shall, in addition to any other punishment, be dismissed from office or discharged from employment upon conviction for such offense."

D. Other Disclosures Requiring Privacy Act Routine Use Notices.

1. Obtaining Credit Reports from Credit Bureaus.

OMB Circular A-129 requires that Federal agencies establish procedures for using credit reports, where appropriate, as part of the decision making process when awarding a loan, loan guarantee, contract, or grant. In order to obtain these credit reports, certain information

such as name, address, and Social Security number (or employer identification number for commercial entities) of the potential recipient must be provided to the credit reporting agency.

2. Obtain Delinquent Tax Information from the IRS.

When an individual applies for a loan under a loan program, for which OMB has made IRC 6103 (1)(3) determination, OPDIVs may request Treasury to disclose IRS information as to whether the loan applicant has a delinquent tax account for the sole purpose of determining the applicant's creditworthiness.

3. Use of Commercial Collection Agencies.

The Debt Collection Act provides authority for a Federal agency to enter into a contract with a commercial collection agency for collection services to recover debts owed to the Federal government. Disclosures to debt collection agencies under 31 USC 3718 or under common law are limited to address, SSN, amount, status, and history of the claims.

4. Salary or Administrative Offsets.

Sections 5 and 10 of the Debt Collection Act authorize salary and administrative offsets, respectively. These offsets are made against other amounts which are payable to the debtor from the Federal government. Offsets against debts owed to OPDIV/component by individuals, which are made from amounts payable to the debtors by a Federal agency other than that OPDIV/component, involve disclosure of information concerning those individuals.

5. Skip Tracing.

During the course of efforts to locate an individual debtor, i.e., skip tracing, it may be necessary to disclose the debtor's name and former address to parties outside the OPDIV/component such as professional organizations, alumni associations, and state and local governmental units, including motor vehicle bureaus. Disclosure to other Federal or quasi-Federal governmental units, such as to the U.S. Postal Service may also be made.

- a. In making disclosures from systems of records for purposes of skip tracing, OPDIV/components shall not divulge the purpose for requesting a current address. However, a statement to the effect that the request involves a matter pending before the OPDIV/component may be given.

6. Miscellaneous Other Disclosures.

Paragraphs D.1. through D.5. above have identified a number of specific disclosures which require prior Privacy Act routine use notices. This list is not all-inclusive. There are additional situations, such as computer matches of debtors against Federal payroll records, in which information on individuals will be disclosed from systems of record to third parties outside HHS. Generally, appropriate Privacy Act routine use notices must be published before such disclosures are made.

The appropriate OPDIV/component Privacy Act Coordinator, the DASF Privacy Act Coordinator for central system of records 09-09-0024, or the HHS Privacy Act Officer should be consulted for assistance.

E. Accounting for Disclosures

1. Under 5 U.S.C. 552a(c) (Privacy Act), whenever a OPDIV/component discloses individually identified information from a system of records to a third party outside HHS (except for disclosures pursuant to the Freedom of Information Act and disclosures to third parties with the written consent of the subject individuals), the responsible system manager or his/her designee must keep an accurate accounting of the recipient, date, nature, and purpose of each such disclosure.
2. The OPDIV/component shall use the documentation to:
 - a. Inform individuals of disclosures made from records about themselves.
 - b. Notify prior recipients of a record when any amendments of, corrections to, or statements of disagreement with the record are made, to the extent that the correction, amendment, or statement of

disagreement pertains to the information previously disclosed.

- c. Provide an audit trail for management review of compliance both with the statutory limitations on disclosures and with the requirement to notify prior record recipients of subsequent corrections and/or statements of disagreements.
3. The accounting files must be kept for 5 years from the date of the most recent disclosure or for the life of the record, whichever is longer.

The "life of the record" is the entire retention period authorized by the Archivist of the United States, regardless of the possibility that the OPDIV/component may retire the records to a Federal records center for storage.

- F. Additional Guidance on Privacy Act. Guidance on implementation of Privacy Act requirements is contained in the HHS General Administration Manual, Part 45. This part provides specific guidance on the basic requirements of the Privacy Act, creating new systems of records and adding routine uses, collecting personally identifiable information, and accounting for disclosures. The most relevant Chapter is 45-10.

10-41-70 CREDIT REPORTING AGENCIES

- A. Reporting Debts. The Debt Collection Act of 1982, P.L. 97-365, authorized the release of information on delinquent debts to private-sector credit reporting agencies, subject to certain procedural requirements. Implementing guidance for this authority is contained in Office of Management and Budget (OMB) Circular A-129, and the Department's claims collection regulation at 45 CFR Part 30. OMB Circular A-129 requires that:
 1. The OPDIVS/components will report overdue debts over \$100 owed by individuals and all debts over \$100 owed by business concerns and private non-profit organizations to consumer or commercial credit reporting agencies.

2. Overdue debts owed by individuals will be reported to consumer credit reporting agencies as defined in 31 U.S.C. 3701(a)(3) pursuant to 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(f). The OPDIV/component must first give the individual, but not the corporate debtor at least 60 days written notice that the debt is overdue and will be reported to a credit reporting agency (including the specific information that will be disclosed); that the debtor may dispute the accuracy and validity of the information being disclosed; and, if a previous opportunity was not provided, that the debtor may request review of the debt or the scheduling of payment. Only the individual's name, address and social security number, and the nature, amount, status and history of the debt will be disclosed.
3. Unless specifically authorized by statute, regulation or written agreement, or unless the debts arise from, or involve, fraud or criminal activity, overdue debts arising from payments to beneficiaries under Titles II, XVI and XVIII of the Social Security Act will not be reported to credit reporting agencies. All other overdue debts of individuals which arise under the Social Security Act may be reported to credit reporting agencies subject to the conditions stated in paragraph 2 above except that such disclosure would be as a routine use under 5 U.S.C. 552(b)(3), rather than a disclosure under 552a(b)(12).

B. Reporting Information to Credit Reporting Agencies.

1. With respect to consumer debts, the first step in the referral process is for the OPDIV/component to notify delinquent debtors that information concerning their accounts will be referred to credit reporting agencies. The notice shall be included in the first bill or demand for payment sent to the debtor after the debt becomes delinquent and must specify the information that will be disclosed, that the debt is overdue, and that the debt will be reported to credit reporting agencies in no less than 60 days from the date of the notice unless payment is received. The notice must specify the principal amount of the debt and the right to appeal the accuracy and/or validity of the debt during the 60-day period. If

delinquent interest is to be reported, the notice must so indicate and must specify the amount accrued at the time of the notice as well as the rate at which future interest will accrue and be reported.

The requirement for 60 days' notice does not apply to the referral of information concerning commercial debts. Although there is no requirement to inform commercial debtors that information concerning their accounts will be referred to credit reporting agencies, the OPDIV/component should notify delinquent commercial debtors that information concerning their accounts will be referred within a certain period of time (e.g., 30 days) unless payment is received. No written notice is necessary with respect to nondelinquent commercial debts.

Debts of state and local governments, Indian tribal governments, other public institutions such as state institutions of higher education, and state hospitals, along with foreign debts, should not be reported.

Delinquent debts of current Federal employees will not normally be reported since this type of debt can be recovered through salary offset. However, where a current Federal employee has a large delinquent debt for which salary offset alone would be impractical, the delinquency should be reported (following the required 60-day notice as discussed above).

Debts of \$100 or less shall not be reported to credit reporting agencies.

The amount, status and history of commercial and delinquent consumer debts shall be reported to all credit reporting agencies covered by government-wide agreements which handle that particular type of debt.

2. The head of each OPDIV/component or his/her designee shall ensure that the following requirements have been met prior to reporting delinquent consumer debts to credit reporting agencies.
 - a. The OPDIV/component shall establish written procedures for:

- (1) Promptly disclosing, to each credit reporting agency to which the original disclosure was made, any substantial change in the status or amount of the debt. A written record of all such disclosures must be maintained in accordance with the Privacy Act. (See section 10-41-60 of this chapter.
 - (2) Upon the request of a credit reporting agency, promptly verifying and correcting, if necessary, information concerning the claim.
 - (3) Permitting consumer debtors to appeal the accuracy and validity of information concerning the debt.
 - (4) Handling consumer disputes in accordance with the Fair Credit Reporting Act.
- b. The head of the OPDIV/component or his/her designee shall review each debt to be reported and determine that:
 - (1) The debt is valid and overdue; and
 - (2) The debtor has neither agreed to repay the debt under a repayment plan which is acceptable to the head of the OPDIV/component, nor filed for a review of the claim.
- c. The head of the OPDIV/component or his/her designee shall send a written notice to the delinquent debtor. If the OPDIV/component does not have a current address, a reasonable effort shall be made to locate the debtor.
- d. Under the law, only the following information concerning consumer debtors may be disclosed to credit reporting agencies:
 - (1) Name, address, taxpayer identification number (Social Security number), and any other information necessary to establish the identity of the individual.

- (2) The amount, status, and history of the debt.
- (3) Name of the OPDIV/component and program under which the debt arose.

If the address reported above was obtained from the Internal Revenue Service (IRS), it may be provided to a credit reporting agency only for the purpose of allowing the preparation of a credit report. If the address was acquired from a source other than the IRS (e.g., department of motor vehicles, postmaster), it may also be disclosed to the credit reporting agency for purposes of encouraging the repayment of the overdue debt.

- 3. The head of each OPDIV/component or his/her designee shall ensure that the following requirements have been met prior to reporting commercial debts to credit reporting agencies.
 - a. The OPDIV/component shall establish written procedures for:
 - (1) Promptly disclosing, to each credit reporting agency to which the original disclosure was made, any substantial change in the status or amount of the debt.
 - (2) Upon the request of a credit reporting agency, promptly verifying and correcting, if necessary, information concerning the claim.
 - (3) Permitting commercial debtors to appeal the accuracy and validity of information concerning the debt.
 - b. The head of the OPDIV/component or his/her designee shall review each debt to be reported and determine that it is valid.
 - c. The law does not restrict the type of information which may be disclosed concerning commercial debtors. Therefore, the following information on commercial debts should be reported:

- (1) Name, address, taxpayer identification number (employer identification number), and any other information necessary to establish the identity of the commercial entity.
- (2) The amount, status, and history of the debt.
- (3) The name of the OPDIV/component and type of program or activity under which the debt arose.

- C. Review of Claims Prior to Disclosure. Prior to disclosure of information regarding a delinquent debt to a credit reporting agency, and at such other time as may be provided by law, a debtor may request that the head of the cognizant OPDIV/component review the amount of the debt and the validity of the initial determination of the debt.

The head of each OPDIV/component shall establish procedures for the review of the debt, including verification by the cognizant finance office of the amount of the debt, the basis for the debt, and the validity of the debt. As necessary, the finance office shall obtain information from the cognizant program office to respond to questions concerning the debtor's eligibility for waivers, forgiveness, etc. under specific program statutes.

Results of the review, or an interim response, shall be forwarded to the debtor within 30 days following receipt of the request, in accordance with the procedures established by the head of the OPDIV/component. If an interim response is sent, a final response must be sent within 60 days following receipt of the request for review. Results of this review will be fully documented, with a copy placed in the official file.

- D. Disputes Arising After Disclosure. Following the disclosure of information regarding a delinquent debt to a credit reporting agency, a debtor may dispute the amount of the debt, the basis for the debt, the validity of the debt, or any other information included in the disclosure.

The head of each OPDIV/component shall establish procedures for the resolution of post-disclosure disputes, including verification by the cognizant finance office of the amount of the debt, the basis for the debt, and the validity of the debt.

As necessary, the finance office shall obtain information from the cognizant program office to respond to any dispute concerning the debtor's eligibility for waivers, forgiveness, etc., under specific program statutes. A response addressing all of the matters disputed by the debtor shall be forwarded to the debtor and/or consumer reporting agency, as appropriate, within 30 days following receipt of the dispute notice. The basis for resolving the dispute must be fully documented in the debtor's official file. If appropriate, corrected information concerning the debt shall be immediately sent to the credit reporting agency and any necessary adjustment shall be made in the accounting records of the OPDIV/component.

E. Obtaining Information from Credit Reporting Agencies. The General Services Administration has established a Federal Supply Schedule of vendors to provide credit reports to Federal agencies. To obtain credit reports from this schedule, OPDIVS/components should follow their administrative purchasing procedures. However, OPDIVS/components will need to obtain appropriate passwords from the individual vendors to enable them to access this information.

1. Credit reports should be obtained:

- a. To assess the ability of delinquent debtors to repay their debts.
- b. To determine whether potential recipients of Federal loans, loan guarantees, grants, or contracts are delinquent on any other Federal obligations.
- c. Where an award is contemplated to a high-risk grantee, contractor, or borrower whose financial viability is questionable, or to a grantee, contractor or borrower with whom the agency has never dealt before.
- d. To obtain current addresses for missing debtors. Credit reporting agencies offer address locator and skip tracing services which can provide an agency finance office with the most current address of a debtor. These services enable a fiscal office to locate a debtor whose whereabouts are unknown. The

services are available for a nominal charge and can greatly help finance offices in monitoring and controlling outstanding receivables.

- e. To assess the financial ability of a debtor to repay a debt in installments.
 - f. To consider the compromise of an amount due, the suspension or termination of collection action, or the referral of a delinquent debt to the Department of Justice for litigation or other action.
2. Credit reports need not be obtained in every instance that a loan, loan guarantee, contract, or grant is awarded. Credit reports should be obtained only when they would serve a useful business purpose, taking into account such factors as the amount of the award, prior experience with the recipient, and the existence of other information available to evaluate credit worthiness.

Where a credit report indicates that an application or potential recipient of a HHS award is delinquent on a Federal debt, has been debarred or suspended as a contractor by a Federal agency or has otherwise failed to meet obligations to the Federal government, no award shall be made without consulting the other affected agencies.

Where a credit report discloses that a delinquent debtor is the recipient of another Federal loan, contract, or grant, consideration shall be given to collecting the debt by administrative offset against payments to be made on such loan, contract or grant, using procedures set forth in the Federal Claims Collecting Standards.

3. The Fair Credit Report Act (P.L. 91-508), which regulates the operations of consumer credit reporting agencies, also includes sections which are of direct consequence to users who obtain reports. These sections are Section 604, Permissible Purpose of Reports; Section 615, Requirements on Users of Reports; and Section 619, Obtaining Information Under False Pretenses.

- a. The Act establishes the following liabilities for violation of the Act's provision regarding consumer debts:

Any credit reporting agency or user of information which willfully fails to comply with any requirement imposed under the Act with respect to any consumer is liable to the consumer in an amount equal to the sum of:

- (1) Any actual damages sustained by the consumer as a result of the failure;
 - (2) Such amount of punitive damages as the court may allow; and
 - (3) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.
- b. Any credit reporting agency or user of information which is negligent in failing to comply with any requirement imposed under the Act with respect to any consumer is liable to that consumer in an amount equal to the sum of:
 - (1) Any actual damages sustained by the consumer as a result of the failure.
 - (2) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

Therefore, each OPDIV/component shall develop internal controls to assure that credit reports are obtained for authorized purposes only. As a part of those internal controls, we recommend that individual requesting the procurement office to order credit reports be required to certify on each requisition that the reports are being requested for the purpose of conducting official government business. This authority does not extend to debts arising under the Social Security Act which cannot be referred to a private collection agency.

10-41-80 PRIVATE COLLECTION AGENCIES

A. General. The authority to contract with commercial entities, for collection services is contained in the Debt Collection Act of 1982 and the Federal Claims Collection Standards (4 CFR Part 102 - Standards for the Administrative Collection of Claims; Contracting for Debt Collection Services).

1. The Standards provide that contracts may be entered into by Federal agencies for collection services when they meet the following conditions:

- (a) The collection service supplements the basic collection program of the agency;
- (b) The authority to resolve disputes, compromise claims, terminate collection action, and initiate legal action must be retained by the agency; and
- (c) The contractor shall be subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, and, when applicable, to Federal and state laws and regulations pertaining to debt collection practices such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692.

OPDIVS/components shall contract for collection services only after recovery has been attempted through routine in-house due diligence efforts. The Federal Claims Collection Standards (4 CFR 102 - Standards for the Administrative Collection of Claims; Contracting for Debt Collection Services), together with any other administrative remedy which may be available for the collection of debts, must be utilized before contracting for collection services.

2. OPDIV/components must use the General Services Administration (GSA) Supply Schedule in selecting contractors for collection agency services. The GSA Schedule must be used for all accounts that do not involve a service repayment option such as that available to the National Health Service Corps. Scholarship debtors.

B. Debt Collection Requirements for Collection Services Contracts.
OPDIV/component contracts for collection services must include conditions that:

1. The authority to resolve disputes, compromise claims, terminate collection action, and initiate legal action is retained by the OPDIV/component. The contractor shall be required to return all claims which it recommends for compromise or termination.
2. The contractor shall be subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, and, when applicable, to Federal and state laws and regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act of 1977 (15 U.S.C. 1692).
3. The contractor must agree to indemnify, defend, and hold the Federal government free and harmless from all liability, loss, damages, claims, and other expenses, including attorney's fees and court costs, resulting from the contractor's performance under the contract.
4. The contractor shall ensure that the data in its system is used exclusively for collection activities related to the accounts transferred. The information shall not be accessed by the contractor in connection with any other collection efforts on the same debtor under another contract or agreement. Secure safekeeping facilities must be maintained by the contractor for account files. Review of the contractor's compliance with established procedures will be conducted by the cognizant OPDIV/component via on-site visits.
5. The contractor's collection practices must be fair and reasonable, and must not involve harassment, intimidation, and false or misleading representations. Review of the contractor's collection practices should be conducted by the OPDIV/component to determine compliance with the Fair Debt Collection Practices Act of 1977 (15 U.S.C. 1692).
6. The contractor shall provide information to the OPDIV/component project officer to resolve complaints of harassment, intimidation, false or misleading

representation, or unnecessary communications, raised by debtors against the contractor's collection practices. The procedures for resolution of complaints shall be provided in the contract.

7. The OPDIV/component shall retain authority and oversight over the collection methods employed by the contractor.
8. Each contractor employee assigned to the contract shall receive training relevant to the Privacy Act of 1974, and the contractor shall certify that the employee has received it, before the employee begins any collection activity on OPDIV/component accounts. The contract shall contain a sample form of the acknowledgement of training.
9. The contractor must obtain prior approval of the formats of letters, bills, and other material he proposes to use in the contract. Also the contractor shall obtain the OPDIV/component project officer's prior approval of all form letters proposed for use in skip tracing.
10. The contractor shall record all collection activity (skip tracing attempts, written and verbal contacts with the debtor or his representative, payment information, and other pertinent data) taken on each account.
11. The contractor shall propose a quality control plan that will insure the effectiveness and efficiency of its operations. The contractor shall implement, upon final approval by the contracting officer, the plan designed and proposed by the contractor in response to the RFP. The quality control plan shall include the monitoring of day-to-day collection activities against performance specifications and the closing of accounts against production standards; and shall also include, but not be limited to, the major activities of the collection process.
12. The OPDIV/component will select the accounts to be transferred to the contractor and the procedures that will be followed in these selections.

13. The contractor shall return to the OPDIV/component ineligible accounts that have been inadvertently transferred for collection, with appropriate documentation, within thirty (30) calendar days of identification of such an account. The RFP and contract must specify which type of accounts are ineligible for transfer to the contractor, e.g., accounts involved in bankruptcy proceedings and accounts referred to the Department of Justice.
14. The contractor must resolve systematically all accounts transferred to it. This involves:
 - a. Working all accounts in accordance with the terms and conditions included in the contract.
 - b. Expending a level of effort which is equal to or exceeds the "Minimum Account Resolution Standards" which shall be specified in the contract.
 - c. Providing information to the OPDIV/component to resolve complaints.
 - d. Maintaining a record of all activities taken on each account.
 - e. Producing on at least a monthly basis management and fiscal reports to monitor contractor's performance, as specified in the contract.
15. The contractor shall process accounts in accordance with the account processing schedule incorporated in the contract. The processing schedule shall be documented and shall cite, for example, the maximum number of workdays before each typical account shall be moved from one collection step to the next and shall also cite backlogs at any given processing step.
16. The contractor shall suspend collection activity on an account and refer the issue to the OPDIV/component for resolution within ten (10) working days after any of the suspension conditions as cited in the contract occurs. Suspension of collection activity includes, but is not limited to, the following conditions:
 - a. The debtor disputes the amount owed;

- b. The debtor raises a legal defense against repayment;
 - c. The debtor wishes to compromise the amount due or request forbearance due to temporary inability to repay; or
 - d. The debtor provides evidence that the debt has been satisfied.
 - 17. The contractor shall use contractor prepared bills for billing the debtors, the format of which has been approved by the project officer. The contract shall specify requirements concerning billing the debtors.
 - 18. The contractor will not, under any circumstances, adjust the balance of an account for any reason without prior approval from the OPDIV/component.
 - 19. The contractor shall receive and process repayments and ensure the security of monies received in accordance with the terms and conditions of the contract.
 - 20. All accounts shall be worked to the level of effort specified in the "Minimum Account Resolution Standards" before they are returned to the OPDIV/component as specified in the RFP and contract.
 - 21. The RFP and the contract shall cite the conditions for which the contractor will be paid, and that the contractor will not be paid for unidentified repayments or payments from the debtors received on any account after it has been transferred back to the OPDIV/ component.
 - 22. The contractor shall accomplish an orderly transfer of all outstanding accounts and all documentation back to the project officer upon expiration of the contract. (The contract shall specify the time schedules and other requirements for contract phase-out.)
- C. Responsibility for Implementation. Each OPDIV/component shall be responsible for:
- 1. Implementing and enforcing the policies set forth in this chapter on contracting for collection services.

2. Developing and publishing in the Federal Register a Privacy Act routine use notice for the applicable systems of records from which individually identifiable information on individuals will be disclosed if the OPDIV/component has established a system of records supplemental to the control system 09-09-0024. The routine use notice permits the disclosure of claim amount, status, and history of claim to the collection agency and to any collection agency subcontractors. Notices in supplementary systems of record must be published prior to releasing debtor accounts to the collection agency.

10-41-90 CHARGING INTEREST, ADMINISTRATIVE COSTS, AND PENALTIES

- A. General. The authority to impose interest, penalty charges and the administrative costs of collecting delinquent debts is provided by the Debt Collection Act of 1982, the Treasury Financial Manual (TFM 6-800), the Federal Claims Collection Standards (4 CFR Parts 101-105), issued jointly by the General Accounting Office (GAO) and the Department of Justice, the HHS claims collection regulations (45 CFR Part 30) and Common Law.

This section applies to all debts due HHS except those owed by agencies of the United States, and those arising under contracts which were effective on October 25, 1982, which was the effective date of subsection 3(e) of the Federal Claims Collection Act. Also excluded are the following:

1. Social Security Act Debts - Unless specifically authorized by statute, regulations or written agreement, or unless the debts arise from, or involve, fraud or criminal activity, the Department will not charge interest on debts arising from payments to beneficiaries under Titles II, XVI and XVIII of the Social Security Act. The charging of interest is appropriate on debts arising from section 1862(b) of the Act for Medicare payments for which a beneficiary has been reimbursed by a liable third party.

The Department will charge administrative costs or late payment penalties on debts arising under the Social Security Act where authorized by statute, regulations, or written agreement.

2. Grants to States, Local Governments and Indian Tribes
Administrative costs and penalties cannot be charged on debts owed by States, local governments, or Indian tribes unless permitted by statute, regulation, or written agreement.

Interest charges will be assessed on delinquent debts of states, local governments or Indian Tribes arising from disallowances if the states or local governments or Indian Tribes (1) have received cash advances, (2) have elected to keep the advance, and (3) the appeal was unfavorable or the appeal period expired before an appeal was filed. The adjusting grant award mechanism will be used to recover deferred or disallowed expenditures and assessed interest.

- B. Policy for Charging Interest. Accounts and loans receivable will be considered delinquent if not paid by the due date, specified in the initial notification of indebtedness, unless other arrangements to satisfy the debt have been made. The initial notification of indebtedness shall explain the Departmental requirements for charging interest, penalties, and administrative costs of collection, and shall include the current applicable interest rate when it is known in advance that will be assessed on the debt should it become delinquent.

1. Interest shall accrue from the date on which notice of the debt and the interest requirements is first mailed or hand-delivered to the debtor (on or after October 25, 1982), using the most current address that is available to the cognizant OPDIV/component. If an OPDIV/component uses an "advance billing" procedure (i.e., if it mails or hand delivers a bill before the debt is actually owed) it can include the required interest notification in the advance billing, but initial interest may not start to accrue before the debt is actually owed.
2. The specific payment due date will be no more than 30 days from the date of mailing or hand-delivery of the initial bill or demand for payment and will be stated in the request for payment. In the absence of a different rule prescribed by statute, contract, or regulation, the initial bill or

payment demand letter must inform each debtor that interest will be charged on any debt remaining unpaid after the due date. The date of the bill/demand letter and the date of the mailing or hand-delivery are to be the same.

3. Interest shall not be charged if the debt is paid within 30 days after the date from which interest begins to accrue.
 - o The head of the cognizant OPDIV/component may extend such 30-day periods on a case-by-case basis if it can be reasonably determined that such action is appropriate.
 - o In many cases, the costs of the additional billing and collection effort necessary to charge interest to the date on which payment is received would exceed the relatively small amounts which are likely to be recovered. Therefore, unless the responsible OPDIV organization has a compelling reason to charge interest to the date on which payment is received, each bill or payment demand sent to the debtor at the end of a 30-day (or other) period during which no payment was received shall specify the amount of interest which accrued to the end of said 30-day period and shall state that if payment is not received within the next 30-day period, another 30 days interest will be added to the debt.
4. Interest charges as required by this Chapter shall not apply if an applicable statute, regulation, loan agreement, or contract either prohibit the charging of interest or charges, or explicitly fixes interest or charges on other terms that apply to debts involved.
5. Interest, late payment penalties and administrative cost charges will not be assessed pending consideration of waiver of review under a statute, unless the reviewing or hearing officer determines in writing that the request for waiver, a hearing or other form of review was spurious.

6. Accounts receivable that are subject to administrative appeal and/or litigation by the debtor shall be charged interest from the date the debtor is initially notified of the debt or, in the case of advance billing, from the due date specified in the initial bill. If the debtor appeals or litigates the amount owed, interest charges will accrue but not be billed to the debtor during the period of the appeal or litigation. If the debtor wins the appeal or litigation, the interest charges (on the amount of debt which is not upheld) will be removed from accounts receivable by the cognizant HHS finance office. If the debtor does not win the appeal or litigation, the responsible OPDIV organization office shall proceed with its efforts to collect the full amount due, including interest charges (on the sustained amount of the debt) which accrued during the period of appeal or litigation.
7. If a lump sum demand is converted to an installment agreement, or other formal payment arrangement, OPDIVS/components have the option to:
 - o Option A * Make the accrued interest, penalty, and administrative charges due and payable at the time the installment agreement is consummated; or
 - o Option B * Add the accrued interest, penalty, and administrative charges to the principal to be paid under the installment agreement or the formal payment arrangement.
8. If a debt is paid in installments, the rate of interest that will be charged is the rate that is in effect at the time the installment agreement is made, unless a different rule, statute, contract, or regulation prevails.
 - o Where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, the cognizant OPDIV component may set a new interest rate in accordance with paragraph C. below.

- o Installment agreements, contracts, or other formal payment arrangements may not provide a grace period for installment payments. Interest will be charged on the full amount of the outstanding debt starting with the date of the agreement.
 - o Interest should not normally be imposed on charges assessed for interest, penalties, or administrative costs. However, if a debtor defaults on a previous repayment agreement, charges which accrued but were not collected under the defaulted agreement shall be added to the principal to be paid under a new repayment agreement.
 - o Interest, but not administrative cost charges or late payment penalties will continue to accrue when collection of a debt is suspended.
- C. Policy for Rate of Interest. Except as provided below, each OPDIV/component shall charge an annual rate of interest on delinquent debts and the outstanding balance on installment debts as prescribed in 45 CFR Part 30.13, as follows:
1. Except as provided in section C-2 below, the rate will be as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that the Department becomes entitled to recovery.
 2. The interest rate established in C-1 above shall be no lower than the Current Value of Funds Rate published by the Treasury in the Federal Register and issued annually in a Treasury Financial Manual Bulletin.
 3. In the case of installment payment agreements, which will provide for full payment of the debt in three years or less, the interest rate established in C-1 above, shall be no lower than the applicable rate determined from the appropriate U.S. Treasury "Schedule of Certified Interest Rates with Range of Maturities."

4. Except as provided in section B-6, above for Option B, the rate of interest shall be the rate in effect on the date from which interest begins to accrue on the debt and shall remain fixed at that rate for the duration of the indebtedness.

- D. Administrative Costs of Collecting Delinquent Debts.
Delinquent debtors will be assessed the administrative costs incurred by the Department as a result of handling and collecting the overdue debts based on either actual or average costs incurred. These costs will include direct (personnel, supplies, etc.) and indirect costs of collecting in-house and contracting with collection agencies and may include the costs of providing hearings or any other form of review requested by debtors. These charges will be assessed monthly, or per payment period, throughout the period that the debt is overdue. Such costs may also be additive to other administrative costs if collection is being made for another federal agency or OPDIV/component.

It is also Departmental policy to assess the debtor for costs associated with the use of private collection agencies. Unless specifically authorized by statute, regulation or written agreement, or unless the debts arise from, or involve, fraud or criminal activity, debts arising from payments to beneficiaries under Titles II, XVI and XVIII of the Social Security Act will not be referred to private collection agencies for collection.

- E. Late Payment Penalties. A penalty charge of 6 percent a year will be assessed on a debt, a payment or any portion thereof that is more than 90 days overdue. Late payment penalty charges will accrue from the date the debt, or portion thereof, became overdue until the overdue amount is paid. These charges will be assessed monthly, or per payment period. Penalty payments shall be reported to the IRS to assure debtors are prevented from using such penalty payments as a business expense, thereby reducing their liability.
- F. Allocation of Payments. Partial or installment payments will be applied first to outstanding administrative costs charges, then to late payment penalties, then to accrued interest and then to outstanding principal unless a different rule is prescribed by statute, contract, or regulation.
- G. Waiver of Interest, Penalty, and Administrative Charges.
OPDIV/components may waive, in whole or in part, the collection of interest, penalties, and administrative charges assessed pursuant to this chapter:

- o Under the criteria set forth in section 10-41-50 of this chapter concerning the compromise of debt claims, without regard to the amount of the debt.
- o If the debt or the charges resulted from an OPDIV's/component's error, action or inaction, and without fault on the part of the debtor.
- o If collection would defeat the overall objectives of an HHS program.
- o Interest shall be waived on a debt or any portion of a debt which is paid within 30 days of the initial demand letter.

The decision to waive interest, penalty, or administrative charges may be made at anytime; however, collections of which have already been received may not be refunded.

- H. Termination of Interest, Penalty, and Administrative Charges.
HHS finance offices shall stop accruing interest, penalty, and administrative charges once all the administrative collection actions have been taken in accordance with this chapter, and the OPDIV's/ component's claims collection officer or the HHS Claims Officer makes a determination to terminate collection action in accordance with section 10-41-50I of this chapter.
If a designated OPDIV or Departmental Claims Officer refers a claim to the General Accounting Office (GAO), he/she shall advise the cognizant finance office promptly as to the action by GAO which is being sought (i.e., compromise, suspension, or termination) and as to the adjustments, if any, to be made to the accrued interest and other charges on the debt.

If a designated OPDIV or Departmental Claims Officer refers a claim to the Department of Justice, interest will continue to accrue on the debt until notification is received that the claim has been settled or collection efforts have been terminated by the Department of Justice.

Uncollectible accrued interest and other charges should be written off in accordance with the procedures for writing off debts, as set forth in section 10-41-50H of this chapter, once the efforts to collect the associated receivable have been terminated.

- I. Accounting and Reporting of Interest Penalty and Administrative Charges. Accrued interest must be reported by all OPDIVS/components on Schedule 9, SF-220 "Report and Status of Accounts and Loans Receivable Due from the Public."

For partial payments, and for all loan and installment payments the amount received shall be first applied to any accrued charges for the administrative costs of collection then to penalty charges, then to the accrued interest, and finally to the payment of the principal, unless a different rule is prescribed by statute, contract, or regulation.

The total amount of interest, penalty, and administrative cost charges collected for late or installment payments shall be credited as follows:

Financing Interest (cost of extending credit)	751499
Penalty for Delinquency	751099
Penalty Interest (assessment on delinquency)	751035
Administrative Charges (costs incurred for collecting, including collection agency fee)	753220

Definitions of these receipt accounts are:

751499	Miscellaneous Interest Collection - Not Otherwise Classified
751099	Fines, Penalties and Forfeitures, Not Otherwise Classified
751035	Fines, penalties and Forfeitures, Immigration and Labor Loans
753220	Miscellaneous Recoveries - General Fund Proprietary Receipts, Not Otherwise Classified

**10-41-100 DEPOSIT OF COLLECTIONS INTO GENERAL, TRUST FUND,
AND MISCELLANEOUS RECEIPTS ACCOUNTS**

- A. General. Generally, any money received by a Federal agency is to be deposited into the miscellaneous receipts fund of the Treasury (31 U.S.C. 3302). The acknowledged exceptions to this rule are (1) where specific statutory authority provides that the agency may retain the funds and (2) where the money received qualifies as a repayment. A repayment* generally includes a refund, such as the recovery of an erroneous payment or overpayment.

Thus, where specific statutory authority permits, repayments (collections) are to be made to the credit of general or other fund accounts. Where such specific authorities do not exist, collections will be to the credit of a miscellaneous receipts account. Recoveries of advances or overpayments are credited to the fund account from which the advances or overpayments occurred. These principles also apply to program deferrals and disallowances and audit disallowances. However, when the specific account for the credit cannot be determined, collection will be deposited to miscellaneous receipts.

- B. False Claims Act Recoveries. Under the False Claims Act, 21 U.S.C. 3729, the following amounts are to be collected upon proving that a false or fraudulent claim has been made to the government: The amount of the claim, an equal amount, a \$2,000 penalty, plus costs of the action reduced by any amounts awarded by the court.

The principal recovered under a False Claims Act suit falls within the "refunds" exception. A payment procured by fraud is clearly "erroneous at the time it was made". Thus, the principal amount of the erroneous payment should be credited to the program account from which it was made. There is no statutory or other authority, however, for depositing the "double" part of the damages, the penalty or the costs in the program account. These amounts should be deposited in Treasury miscellaneous receipts.

* Consult GAO's Principles of Federal Appropriations Law for further discussion and examples of repayment.

- C. Accounting for Collections. Appropriation reimbursement and appropriation refund are routinely deposited to the fiscal year account from which reimbursable obligations occurred or from which overpayments or advances occurred. Identification of the fiscal year must be retained throughout the cycle of a receivable and collection in order to preserve the intentions of the Congress when funds are appropriated (see Chapter 3, Title 7, GAO Manual). Unless otherwise permitted specifically by law, recoveries of funds from deferrals, disallowances, and overpayments may be reobligated if the period of availability established by appropriation law has not expired. Otherwise, recoveries will be credited to the proper appropriation and

funds will be lapsed. Collection of interest, administrative costs, and penalties relating to the appropriation refund are to be deposited to miscellaneous receipts unless specific statutory authority exists to permit credit to a specific appropriation or fund account.

**10-41-110 DEBTS INVOLVING AWARDS PAID THROUGH THE PAYMENT
MANAGEMENT SYSTEM (PMS)**

- A. General. The Federal Assistance Financing Division (FAFD) operates the Department's Payment Management System (PMS) for financing federal assistance awards. It is responsible for maintaining records of cash disbursed and collected, advances made, and recipient reported disbursements as well as advances received from OPDIVS and Regions. Cash advances which are not in dispute or delinquent are assets which will be classified by FAFD as Advances to Non-Federal Agencies - Refund until reduced by recipient reported disbursements. However, advances to recipients for block grants or other similar programs will be classified as disbursements (as advised to recipients) where law or regulation do not require recipients to subsequently report expenditures, so long as the amount advanced is within the amount of the award.

Different procedures will be required where (1) advances exceed award amounts or disbursements reported to FAFD; (2) audit disallowances have been taken and FAFD is the official action point or (3) the OPDIV/Region has deobligated part or all of an award. For these categories of debt, FAFD will diligently attempt to locate the debtor and initiate required due diligence.

- B. Debts Involving Overpayments or Overdraws. Beyond the demand letter process, debts resulting from overpayments or withdrawals will be handled entirely by FAFD up to the point of adjusting appropriations for write-offs. This process involves, but is not limited to, diligently locating debtors, sending demand letters, providing a review of the debt if requested by the debtor, entering into repayment agreements and using credit reporting and collection agencies (for locating a debtor, obtaining financial information about the debtor, reporting debtors, and for making collections), referring debts for write-off and litigation, and preparing related documents.

When debt collection is terminated and there is a decision to write-off a debt, the uncollectible debt will be referred to the OPDIV/Region for adjustment against the applicable appropriation.

- C. Debts Resulting from OPDIV/Region Deobligations. For these debts, FAFD's actions will include compliance with all due process procedures. If the debtor cannot be located or refuses to pay the debt and will not negotiate terms and if there is no other active award which could be used for offset, the debt will be referred to the OPDIV/Region which issued the award. Along with the referral, FAFD will send the OPDIV/Region copies of demand letters and responses, documented telephone conversations and attempts to locate/ contact the debtor, and any other documents which may be necessary or useful in the event of litigation.
- D. FAFD Referral of All Uncollectible Debts to OPDIVs and Regions. When uncollectible debts are referred by FAFD to the OPDIVs/Regions for adjustment against the applicable appropriation, a simultaneous "transfer" transaction must be made in the same accounting period which will reclassify the OPDIV/Region advance (which was made to FAFD and is an outstanding receivable on the records of PMS) to an OPDIV/Region receivable. This will be accomplished through a controlled transmittal. (See Exhibit 10-41-F.)

When the debt is referred to the OPDIV/Region, account- ability for the accounts receivable is transferred from FAFD, which will adjust its records accordingly. The OPDIV/Region will assume the receivable through the TC 062(R) and TC 070 which effectively recognizes the conversion of the excessive cash advance (to FAFD) to an OPDIV accounts receivable for purposes of further collection and/or write-off. (See Exhibit 10-41-G). If a write-off occurs, the additional obligation must be recorded to cover the loss unless a reservation of funds is made at the time an allowance for loss is established. This is done irrespective of whether appropriations are available. If funds are not available an anti-deficiency violation has occurred, and a violation report must be prepared.

The referral will require the OPDIV or Region to reclassify its previously recorded advance to FAFD (Advance to Other

Federal Agencies) to an accounts receivable (Accounts Receivable- Non-Federal Agency-Refund) at either the OPDIV or Regional level, depending upon where the collection action will take place.

The OPDIV/Region will also record as a receivable (TC 139) the interest, penalty, and administrative cost charges accumulated at FAFD. Upon collection, these amounts will be deposited to the appropriate Treasury miscellaneous receipt accounts.

- E. Public Assistance Type Awards. Deferrals and disallowances debts will be handled by the OPDIVs. However, payments in excess of awards and payments in excess of disbursements reported to FAFD by recipients will be accounted for and collected by FAFD as described above.
- F. Debt Involving Cash Pooling. Identification of the appropriation involved with a debt can usually be determined readily where the debt results from a disallowance, negative award, or overpayment for which there is a distinct accounting by award for cash draws. Where this is not the case and the specific award(s) cannot be determined, the debt is to be charged to all appropriations involved under the "pooled" payments made to the recipient for the period when the debt occurred. However, if FAFD is able to determine more specifically that the debt applies to certain awards, the debt shall be appropriately recorded.

10-41-120 COLLECTING DEBTS BY ADMINISTRATIVE AND SALARY OFFSET

- A. General. The collection of delinquent debts by administrative or salary offset represents a low cost alternative to the use of private collection agencies or litigation where routine due diligence efforts have failed.

The Debt Collection Act of 1982, P.L. 97-365, significantly expanded the authority of Federal agencies to collect delinquent debts by offset against amounts payable to the debtors. However, in expanding the offset authorities of Federal agencies, the Debt Collection Act imposed due process requirements to protect the rights of debtors.

Government-wide standards, including due process requirements, for collecting debts by offset are set forth in the Code of Federal Regulations as follows:

1. Administrative offset is covered by section 102.3 of the Federal Claims Collection Standards (4 CFR Part 102).
2. Salary offset is covered by OPM's pay administration regulations (5 CFR Part 550).
3. Specific administrative offset from amounts due former Federal employees from the Civil Service Retirement and Disability Fund, is covered by OPM's offset procedures at 5 CFR Part 831.

The Department's implementation of the Debt Collection Act and the government-wide standards for collecting debts by offset, including related due process requirements, is published in the HHS claims collection regulation (45 CFR Part 30).

This chapter supplements the requirements of the HHS claims collection regulation, and sets forth the policies and procedures to be followed by OPDIVS/components in:

1. identifying and implementing opportunities for the collection of debts owed to the OPDIVS/components by administrative and salary offset, including offset against amounts payable by other Federal agencies; and
2. cooperating with other Federal agencies in collecting debts owed to those agencies by offset against amounts payable by the OPDIV/component.

- B. Administrative and Salary Offset Definitions, Authorities, and Distinctions. Administrative offset refers to satisfying a debt by withholding money payable by the Department to, or held by the Department for a debtor. As applied to employee debt, it relates primarily to debts where offset is expressly authorized or required by other more specific statutes. Funds from other agencies may be extended to the same debtor to effectuate administrative offset. (Offset against judgments held by the debtor against the United States will be effected through the Comptroller General pursuant to 31 U.S.C. 3728.)

Salary offset refers to a specific type of administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent. 5 U.S.C. 5514 (as amended by the Debt Collection Act of 1982) provides

the authority for, and specifies the procedures that govern, all salary offsets which are not expressly authorized or required by other more specific statutes. Examples of other more specific statutes include travel advances under 5 U.S.C. 5705, training under 5 U.S.C. 4108, and debts owed by former employees under 5 U.S.C. 8347.

1. With regard to the amounts which can be withheld, the following distinctions are made on the statutory basis of the type of indebtedness:
 - a. 5 U.S.C. 5514 and the other more specific statutes are governed by different salary offset limitations. OPM's pay administration regulation at 5 CFR 550.1104(i) and the HHS claims collection regulation at 45 CFR 3015(i) limit employee salary offsets under 5 U.S.C. 5514 to a maximum during any pay period of 15% of the disposable pay from which the deduction is made, unless the employee authorizes a greater amount by written agreement.
 - b. Non-5 U.S.C. 5514 debt setoff from an employee's salary is governed by the FCCS, which require that the amount of offset must bear a reasonable relationship to the size of the debt and the debtor's ability to pay. Thus, the 15% rule does not apply per se to recoupment of travel, training, or debt related to more specific statutes.

For example, when possible, offsets against the Civil Service Retirement and Disability Fund are collected in one payment from the debtor's refund or annuity. For large debts to be recovered from an annuity, OPM defers to the creditor agency the amount of the installments, taking into consideration the ability of the debtor to repay, financial hardship, etc. OPM will not make an installment deduction for more than 50% of the net annuity, unless a higher percentage is needed to satisfy a judgment against a debtor within three years or the debtor has agreed to a higher amount. (See 5 CFR 831.1807.)

2. Section 30.15 of the HHS claims collection regulation allows an employee who is a delinquent debtor to request a hearing before the initiation of collection by salary offset to dispute the existence or amount of the debt. However, the preamble of that regulation clearly states:
"* * * while these provisions ensure that each debtor subject to offset has an avenue of appeal, in no way do these rules add an additional appeal procedure where one currently exists * * *."
3. The hearing requirements also differ for offsets initiated pursuant to 5 U.S.C. 5514 and the other more specific statutes:
 - a. Section 5 of the Debt Collection Act of 1982 is codified at 5 U.S.C. 5514 and requires greater hearing requirements for salary related debt than does Section 10 of that Act codified at 31 U.S.C. 3716.
 - b. The Comptroller General has held that salary offsets authorized by more specific statutes other than 5 U.S.C. 5514 are initiated under Section 10 of that Act, as embodied in 31 U.S.C. 3716 and implemented in the FCCS. (See B-219734).

Also, the Comptroller General has ruled in B-217274 that
"* * * offsets from Retirement Fund payments, and offsets first initiated against final salary payments and lump sum leave payments fall under the authority of 31 U.S.C. Section 3716, and the applicable procedures are those of the FCCS. Accordingly, prior to offset, agencies must provide the individuals with the opportunity to obtain review within the agency. * * * In some cases an oral hearing will be required; in others a "paper hearing" will be sufficient. * * * However, these hearings need not be conducted by an administrative law judge or individual not under the supervision or control of the head of the agency."

4. These procedural distinctions are of great significance for debt management purposes when one considers who is authorized to conduct such hearings:

- a. Individuals who hear appeals governed by 5 U.S.C. 5514 offset procedures must not be under the supervision of the Secretary, and may include employees of other agencies, independent contractors or administrative law judges.
- b. Salary offset initiated under more explicit statutes are governed by the FCCS and, therefore, require only an administrative review by an agency employee to substantiate the debt. In such cases, the hearing official can be an employee of the OPDIV/component.

In addition, Section 102.3(c)(2) of the FCCS does not require an oral hearing where "* * * determinations of indebtedness rarely involve issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes * * *." Thus, OPDIV/component reviews conducted under more specific statutes (travel, training, etc.) are sufficient to establish the indebtedness absent issues of credibility or veracity and the debtor need not be afforded a second hearing by an employee not under the supervision of the Secretary. (See also 45 CFR 30.4.)

C. Responsibilities. Maximum implementation and recovery of employee debt through salary offset requires the full cooperation, and timely actions by payroll, OPDIV/component, and claim collections staffs.

- 1. ASPER is revising HHS Personnel Manual Chapter 550-9, Employee Salary Offset and Claims Collection. This instruction will:
 - o govern the collection of debts arising from pay administration, and
 - o will set forth the salary setoff policy and procedural requirements for other employee delinquent debt where the OPDIV/component has primary cognizance over the debt.

For OPDIV/component controlled debt, the payroll staff will provide a Department-wide mechanism to recover employee delinquent debt owed the OPDIV/component.

2. The OPDIVS/components responsibilities are twofold:
 - a. As a creditor agency the OPDIV/component has primary responsibility for:

fulfilling all due diligence requirements specified by applicable law and regulation(s).

 - (2) providing to the payroll systems staff the required written certification that the employees owes the debt and that the debt is to be offset against the employee's pay.
 - (3) assuring that all debts are reported to DPPO before the employee is separated, retired, or transferred before the SF-50 is processed.
 - b. In addition, each OPDIV claims officer is responsible for providing procedural guidance to its OPDIV/components on the explicit requirements for collecting debt for which the OPDIV/component has primary cognizance, including:
 - (1) unprocessed payment system offsets first initiated against final salary,
 - (2) lump sum leave payments, and/or
 - (3) the Civil Service Retirement and Disability Fund for former employee debt.
3. The debt shall be offset in the manner prescribed by ASPER, based on the OPDIV/component meeting the debt certification requirements or the decision of the hearing/review official.

D. Policy.

1. General. Departmental policy governing the recoupment of delinquent debt by salary offset or administrative offset is set forth in this section. OPDIVS/components shall recoup delinquent debt through application of these setoff mechanisms after fulfillment of all applicable due diligence requirements, including notice to the debtor,

completion of reviews of the indebtedness if requested, etc. In addition to taking immediate and timely collection of delinquent debts by administrative and/or salary offset against amounts owed by the debtors, OPDIVS/components shall request appropriate cooperation by other Federal agencies when necessary to collect such delinquent debts by offset, prior to the referral of delinquent debts to commercial collection agencies or the Justice Department whenever:

- a. Routine due diligence efforts (e.g., dunning letters, telephone calls, etc.) have been unsuccessful;
- b. Offset is cost effective or has significant deterrent value;
- c. Offset would not substantially impair or defeat the objectives of a Federal program;
- d. Offset is the best suited method of collection to further and protect the Government's interests;
- e. In addition, with respect to audit and program disallowances:
 - (1) The debtor is unable or unwilling to repay the disallowance;
 - (2) The debtor is unable or unwilling to enter into a satisfactory written installment repayment agreement; and
 - (3) The delinquent debt has been reported to a credit bureau. (This requirement is not applicable to debts owed by State and local governments).

2. Salary Offset - Employee Delinquent Debt.

a. Due Diligence

Delinquent employees shall be issued one 30 day written notice mailed to the employee.

Certification of mailing is adequate to establish receipt by the addressee. (Sample due diligence letters for employee delinquent debt are shown in Exhibit 10-41-H.).

- (1) If the proposed notice of employee indebtedness and offset cannot be personally delivered to the debtor, it will be sent by mail, to the debtor's last known address of record.
 - o The notice shall explicitly state that offset will be initiated by the OPDIV/component commencing on the 31st day after the date of the notice unless the indebtedness is satisfactorily resolved by other mutual arrangements such as a repayment agreement, payment of the debt, etc.
 - o Also, the notice shall comply with all due process requirements, including the debtors right to request an OPDIV/component review of the indebtedness within 15 days of the date of the notice.
 - o OPDIVs should seek to get correct addresses from the employee's personnel office before forwarding for salary offset.
- (2) If no response is received within the allotted time or if the request is returned "addressee unknown", the debt certification will be forwarded to the payroll systems staff for immediate offset.
- (3) The OPDIV/component will attempt to locate the debtor and advise the debtor of the actions that were taken to protect the government's interest, the circumstances requiring that action, the debtor's right to challenge the offset action if deemed appropriate, and that the debtor will

be refunded the amount offset if subsequently successfully contested. Refunds do not bear interest unless required or permitted by law or agreement (see 5 CFR 550.1104 (p)(2)).

b. Hearings.

OPDIV/component hearings and/or reviews for employee delinquent debt related to such specific statutes as those governing travel advances, training, etc., shall conform to the interpretative guidance provided by the Comptroller General in part 10-41-120B of this Chapter. Such internal OPDIV/component hearings and/or reviews usually are not required to be conducted by an administrative law judge or an individual not under the supervision or control of the Secretary. Where hearing officials are required:

- (1) Each OPDIV/component shall schedule in advance to have appropriate review officials available when needed to afford delinquent debtors with appropriate opportunities for pre-offset hearings.
- (2) If such arrangements are not possible, OPDIV/components should take other steps (e.g., through the use of an independent contractor or an administrative law judge) to assure the availability of hearing officials in accordance with subparagraph 30.15(b)(3) of the HHS claims collection regulations.

c. Offset Policy.

- (1) Amount of Salary Offset.

Ordinarily, the size of installment deductions from an employee's disposable pay for non-pay administration classes of employee delinquent debt must bear a reasonable relationship to the size of the debt and the employee's ability to pay (see the FCCS). For such debt, Departmental

policy for the minimal amount deducted for any pay period from the employee's disposable pay (inclusive of interest, administrative costs, etc.) shall be:

Up to \$100.00	Lump Sum
\$100.00 - \$1,500	Approximately \$100
Above \$1,500	A maximum of 78 equal payments which recover the debt plus interest and administrative costs with an appropriate minimum payment of \$100.

(2) Record of Employee Debt.

A record of delinquent debt owed by an employee to an OPDIV/component shall be placed in the employee's personnel and payroll records and maintained there until the delinquent debt is satisfied.

- o If the employee gives notice that he or she is leaving Federal service before the delinquent debt is paid in full, any debt still owed at the time of separation shall be offset against any lump sum payment due the debtor (e.g., payment for accumulated annual leave).
- o OPDIVs should notify DPPD if the debtor gives notice that he/she is leaving to permit lump sum offset.
- o If the employee indicates an intention to transfer to another Federal agency, the new Federal agency shall be requested to continue offsetting appropriate amounts from the delinquent debtor's salary to the extent the debt is not satisfied prior to separation/ transfer from the Department.

- d. Salary Offset on Behalf of Other Federal Agencies.
In accordance with procedures issued by the Treasury Department, OPDIVS/components shall participate in government-wide salary offset programs under which the names of individual delinquent debtors are matched by computer against the payroll and/or personnel records of major Federal employing agencies.
- (1) For employee delinquent debts referred by other Federal agencies for offset, OPDIVS/ components shall not review the merits of the creditor agency's determination with respect to the amount, validity of the debt certified by the creditor agency, or whether a hearing was required. Debtor contestations shall be remanded to the creditor agency. OPDIVS/ components will proceed to effectuate creditor agency efforts in accordance with the original certification unless notified to the contrary by the creditor agency.
 - (2) OPDIVS/components shall cooperate fully with other Federal creditor agencies by promptly honoring their certified claim requests to collect debts owed those creditor agencies by offset from OPDIV/component amounts payable to the debtors, as set forth in section 30.15(s) of the HHS claims collection regulation.
 - (3) Any disputes concerning the debt or the offset must be referred immediately to the creditor agency with a request that the creditor agency promptly inform the cognizant OPDIV/component of any circumstances changing the collection by offset.
 - (4) The OPDIV/component will not review the merits of the creditor agency's decisions.

e. Offset Using IRS Tax Refunds.

In accordance with procedures issued by the Internal Revenue Service (IRS), OPDIVS/components shall seek to offset overdue debts from Federal income tax refunds due debtors who are individuals, where routine due diligence efforts to obtain payment from the debtors have failed and the delinquent debts have been reported to a credit bureau.

- E. Procedures. Collection by offset shall be initiated by the OPDIV/component in all cases where a delinquent debtor is receiving funds under a Federal program or agreement administered by any OPDIV/component or other Federal agency, or is a Federal employee.

In cases where the delinquent debtor does not receive funds from the OPDIV/component an appropriate screening procedure shall be initiated by the OPDIV/component to identify potential offset opportunities. When offset opportunities exist, appropriate due process must be exercised before initiating setoff. After completion of these requirements the OPDIV/component shall collect the delinquent debt by offsetting a lump sum or installments against amounts due the debtor.

If amounts are due from a delinquent debtor employed by another Federal agency, request the other agency to collect the debt by offset. At a minimum, the other agency should be requested to hold up awards or further disbursements of funds (other than salaries to Federal employees) until the delinquent debtor and the cognizant OPDIV/component have reached a satisfactory resolution.

1. Salary Offset Procedures - Delinquent Employee Debt.

When the debt can be collected by employee salary offset the applicable procedures shall be:

- a. Each OPDIV/component shall immediately commence salary offset on the 31st day after the date that notice of proposed offset was mailed to the debtor in the amount necessary to satisfy the debt subject to the limitations set forth in 45 CFR 30.15(i). The exceptions to this start date would be if a formal

alternative repayment arrangement has been accepted, or a review or hearing were pending, in which case offset should commence as soon as possible after a hearing officer's decision affirming the debt.

- b. The frequency and dollar amounts of repayments using the following criteria:
 - (1) The amounts of the deductions will be computed in accordance with the policy at 10-41-120D of this chapter.
 - (2) Interest, administrative costs and late payment penalties (under repayment schedules) are assessed in accordance with the requirements of section 30.13 of the HHS claims collection regulation.
- c. Amounts available for offset will be applied to multiple debts in accordance with section 30.15(f) of the Departmental claims regulation.
- d. OPDIV/components will implement Federal employee salary offset through ASPER's Pay System Division. It is the responsibility of the Pay Systems Division to effect collection as well as transmit data to the OPDIV/component finance office for updating its receivables records. If the Pay Systems Division finds that the employee is no longer on the rolls and if final salary and other payments have already been made, the debt will be referred back to the applicable OPDIV/component finance office for resolution. See Exhibit 10-41-I in this chapter.
- e. Individual debtors need not be screened against the payroll records of individual Federal agencies outside HHS on a case by case basis. However, OPDIV/component should, if practicable, initiate requests at least biennially for a matching of their delinquent debtor files against the payroll records of major Federal employing agencies other than HHS (e.g., the Department of Defense, the Veterans Administration, etc.).

2. Administrative Offset of Other Delinquent Debtors.

When the debtor is not an employee and routine due diligence efforts to collect delinquent debts have been unsuccessful, the OPDIV/component shall, at a minimum, perform the following steps to identify opportunities to collect the delinquent amounts by administrative offset.

- a. If the amount of the debt exceeds \$1,000, and the OPDIV/component office has reason to believe that the debtor may be receiving funds from a Federal agency outside HHS, the OPDIV/component shall contact the other Federal agency or agencies that appear the most likely to have made awards to the debtor (in view of the nature of the debtor's business or activities) to identify offset opportunities.
- b. If the amount of the debt exceeds \$100 and the OPDIV/component has no information regarding any Federal funds to which a delinquent debtor may be entitled, the OPDIV/component shall screen the debtor against its and Departmental, contract, personnel, central registry and/or payment management systems to identify offset opportunities.
 - (1) With respect to non-profit and for-profit organizations, the OPDIV/component should screen delinquent debtors against grantees paid through its accounting system or the Payment Management System (PMS) and the contractors listed in the HHS Departmental Contracts Information System.
 - (2) With respect to monetary audit and program disallowances, if the OPDIV/component does not have a current award with the delinquent recipient, but an active award by another OPDIV is identified, the fiscal office will make formal arrangements through PMS or the other OPDIV to offset the indebtedness from monies due the debtor.

(3) Proposed PMS offset actions require written approval in advance by the Deputy Assistant Secretary, Finance and must be fully supported by documentation showing that all of the pre-offset requirements of 45 CFR Part 30 applicable to the claim have been met. Offsets against other OPDIV contracts must be coordinated with that OPDIV.

- c. If the amount of the debt is \$100 or less, nothing shall preclude an OPDIV/component from seeking opportunities for offset if it finds such action to be in the best interest of the government (e.g., as a precedent/deterrent).
- d. Before offsetting grants by reducing payments which are otherwise made in advance of a recipient incurring costs:
 - o there must be assurance that the recipient will incur additional allowable costs whose Federal share is at least equal to the amount of the offset plus the amount of funds actually advanced.
 - o If not, payment by check should be requested.

GAO report AFMD 82-32 dated January 22, 1982, states that " * * * it is inappropriate for the Government to effect administrative offset against advance payments because it might have the effect of defeating or interfering with the purpose of the grant, see, e.g., B-71019, December 14, 1976 * * *."

F. Suspension, Termination, and Compromise. Please refer to part 10-40-50 of this chapter for policy and procedural guidance.

G. Protection of the Government's Interest.

1. Salary Offset

OPDIV/components shall take immediate action to delay a lump sum leave final check, or final payment, to a delinquent debtor whenever such action is necessary to protect the Government's ability to recover the debt by offset.

- a. The amount withheld shall not exceed the amount of the debt plus any accrued or anticipated interest, administrative cost charges and penalties.
- b. OPDIV/component shall promptly send the debtor the notice specified in section 10-41-120E for this chapter.
- c. The OPDIV/component shall not take final action to effect offset of the debt from the withheld amount until the procedures required in that section have been exhausted. However, the OPDIV must notify DPPO in order to put a "hold" on any lump sum payment or retirement.
- d. An appropriate refund will be paid to the debtor as soon as practical after the debt, or a portion of the debt, is found not to be owed.

2. Administrative Offset

- a. OPDIV/component finance offices may initiate administrative offset to collect a debt more than 10 years after the Government's right to collect a debt first accrued pursuant to 31 U.S.C. 3716 and 4 CFR 102.3(b)(3), if facts material to the government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the government who were charged with the responsibility to discover and collect such debts. OPDIV/component staff should obtain General Counsel assistance on offsetting debts of this nature.
- b. 5 CFR Part 831, describes administrative offset procedures for debts due the United States from benefits or refunds payable to debtors from the Civil Service Retirement and Disability Fund, including time constraints that Federal agencies must observe in processing claims.

- c. OPDIVs/components must provide a release form signed by the debtor to obtain information on the exact amount of money in the individual's retirement account. However, an agency may obtain information as to whether or not there are any funds in the debtor's account by contacting the following OPM records center:

Office of Personnel Management
Retirement and Insurance Group
Employee Services and Records Center
P. O. Box 45
Boyers, Pennsylvania 16017
Telephone: FTS 722-6308

**10-41-130 PROGRAM DEFERRALS AND DISALLOWANCES; AUDIT
DISALLOWANCES - PUBLIC ASSISTANCE TYPE AWARDS**

A. Public Assistance Type Awards.

These awards are broadly characterized as programs authorized under the Social Security Act (See "Public Assistance Type Awards" under 10-41-20 Definitions). These programs include:

ACF - Aid to the Blind(AB and ABD)	Title VI and X
Aid to Families with Dependent Children(AFDC)	Title IV-A
Maintenance Assistance - Administration Costs(AFDC)	Title IV-A
Maintenance Assistance - State and Local Training (AFDC)	Title IV-A
Emergency Assistance	Title IV-A
Child Support Enforcement	Title IV-D
Child Welfare Services	Title IV-B
Foster Care	Title IV-E
Adoption Assistance	" "
Job Opportunities and Basic Skills Training	Title IV-F
Aid to the Permanently and Totally Disabled(APTD and AABD)	Title XIV and XVI
HCFA - Medical Assistance Payments	Title XIX
Medical Assistance Payments - Administrative and Training	Title XIX

HCFA - Medicaid Survey and
Certification

Title XIX

OIG - Medicaid Fraud and Abuse

Title XIX

B. BACKGROUND AND STATUTORY REQUIREMENTS.

Under each of the programs of the Social Security Act, the Secretary has discretionary authority to determine the amount and timing of payments to the States. In this terminology, payments are the awards and funds represent the cash advanced under the program. The timing has been established as quarterly. The amount of an award is determined based on State quarterly estimates, deferrals, disallowances and other adjustments. Supplemental awards are also used for adjusting (upward or downward) quarterly award amounts. Overpayments are amounts paid to the States in excess of legitimate expenditures as determined by program officials. Overpayments can occur in any program and the method of collection can vary by program.

1. Medicaid Program.

Section 1903 (d) (2) of the Social Security Act provides that overpayments to the States in prior quarters are to be collected by reduction of the next quarterly award. Section 1903 (d) (5) of the Act provides that for an overpayment of a State claim which has been disallowed by the Secretary under Section 1116 (d) and if such State files an appeal, the State has the option of either retaining the funds or paying them to the Secretary pending a final decision from the Departmental Appeals Board (DAB). If the DAB upholds the disallowance or any portion thereof and the State chooses to retain payment of the amount in controversy, the Secretary shall offset, from any subsequent payments made to such State, an amount equal to the amount disallowed plus any applicable interest for the period beginning on the date of the disallowance notice and ending on the date of the DAB decision.

Section 1903 (d) (5) of the Act sets the rate of interest as the average of the bond equivalent of the weekly 90-day Treasury Bill auction rates during such period. The rate varies according to market conditions.

2. Other Public Assistance Programs

Sections 403 (b) (2); 455(b) (2); 1003 (b) (2); 1403 (b) (2); and 1603 (b) (2) of the Act also provide that assistance overpayments to the States in prior quarters are to be collected by reduction of the next quarterly award. Procedures for appeal of reductions to award amounts are contained in 45 CFR 201.15.

Interest will be charged in accordance with 45 CFR Sections 30.13 and 30.14. Administrative costs and late payment penalties, where authorized by statute, regulations or written agreements, are to be included on debts arising under the Act in accordance with 45 CFR Section 30.13 (d) (2).

C. Recording and Recovery of Deferrals

A deferral action is the process by which an OPDIV suspends payment of a claim for reimbursement pending the receipt and analysis of further information relating to the allowability of the claim. The OPDIV immediately notifies the State by deferring payment of the claim on the grant award in which the adjustment of the expenditures is taken. The OPDIV reduces the grant award by the total amount of questionable claims.

The State and the OPDIV have specific time frames in which to act on deferrals as explained in 45 CFR Section 201.15.

The State does not have the option to retain the funds during the deferral process. The OPDIV reduces the grant award. It records the deferral as a contingent payable thereby recognizing its potential liability to the State. Resolution of the deferral results in one of the following actions:

- o The State withdraws the claims. The OPDIV reverses the contingent payable. It takes no further action since it is already in possession of the funds.
- o The OPDIV determines the claims are allowable. It issues an adjusting grant award paying the State's claims and reverses the contingent payable.
- o The OPDIV will issue an adjusting grant award paying the State for the claims if it fails to reach a determination

of allowability within the specified time frames. The contingent payable will also be reversed.

- o The OPDIV will issue a disallowance notification if it determines that the claims are not allowable. It will reverse the contingent payable and record the disallowance in accordance with 10-41-130 D.

Exhibit 10-41-J shows the required major OPDIV actions associated with deferrals. Specific and detailed accounting procedures and transaction codes are shown in Exhibit 10-41-K.

Contingent payables will be reported on Treasury Schedule 220-9 and other debt management reports with the following suggested wording:

"In addition to the receivables reported in this section, there are contingent payables in the amount of \$(Amount) relating to program deferrals pending evaluation of additional information from program recipients."

D. Recording and Recovery of OPDIV Program Disallowances

Program disallowances are the result of an OPDIV determination that expenditures claimed by the State are not allowable. Program disallowances can result from an OPDIV determination on a deferral or they can be a direct determination of unallowability.

All OPDIV organizations are to follow the established Department-wide policy for the recording and recovery of program disallowances: (1) Overpayments to States for unallowable expenditure claims will be collected by the issuance of a (negative or downward adjusted) supplemental grant award within 15 days of the expiration of the 30 day response time for appealing a formal disallowance, the final determination of a disallowance from the DAB, and/or the date the grantee drops an appeal. (2) All agreements (i.e. compromise) and disallowance letters are to be sent by "certified mail return receipt requested" to establish the receipt date by the State.

This approach is consistent with the requirements of Sections 403 (b) (2); 455 (b) (2); 1003 (b) (2); 1403 (b) (2); 1603 (b) (2); and 1903 (d) (2) of the Social Security Act.

Section 1903 (d) (5) of the Act allows the States to retain disallowed funds in the Medicaid program during the appeal process subject to interest charges should they lose. This option is available to other programs covered under the Act.

Program officials are to promptly notify the State and OPDIV Finance office by letter of the amount to be disallowed. The disallowance notice should require the State to notify the OPDIV program office by letter within 30 days of the date of the notice if the State plans to appeal along with the amount being appealed; and must indicate whether it opts to (a) immediately repay the disallowed amount being appealed or (b) retain the funds pending the outcome of the appeal to the DAB.

When the DAB sustains the disallowance or any portion thereof, the OPDIV shall issue a negative supplemental award for the amount retained by the State plus any interest charges. Interest is to be calculated from the date of the disallowance letter to the date of the DAB decision. The award adjustment must be made within 15 days after the DAB

decision and forwarded to the servicing finance office. In difficult disallowances, the DAB may issue different types of rulings as follows:

- o A split decision
- o Remand the disallowance to the OPDIV for further determination of allowability
- o Undetermined disallowance amount

Whenever these types of rulings are rendered by the DAB the OPDIV is to reach agreement with the State within 60 days. If an agreement can not be reached within this time period, the OPDIV will (1) request a detailed audit or (2) return the issue to the DAB for final resolution.

The OPDIV is responsible for notifying the State within three workdays after receipt of the DAB decision. The State has 30 days from the DAB decision to provide additional information and documentation to enable the OPDIV to make a determination on the allowable/unallowable amounts.

The OPDIV, in turn, has 30 days to review the information to determine unallowable amounts. The State may appeal the OPDIV's determination based on the language of the DAB decision. After a final determination by the DAB the OPDIV then has 15 days to collect the unallowable amounts after the expiration of the review period. The copy of the adjusting grant award sent to the finance office must clearly identify the disallowance recovery amount. If a State opts to retain the funds during the appeal process and then decides to drop part of the appeal,

the OPDIV will issue a negative grant award for the portion of the disallowance no longer under appeal. Interest charges, using the latest interest rates, will be calculated from the date of the initial disallowance letter to the date the appeal is withdrawn. The interest amount will be included in the negative grant award amount which is forwarded to the finance office.

The accounting policy requirements differ according to the participant's decision on appealing; exercising its option to return the funds; and the final determination of the DAB. Exhibit 10-41-J (pages 2 and 3) shows a matrix for required OPDIV actions associated with disallowances. Specific codes are shown in Exhibit 10-41-K.

Payment of the disallowance will be considered to have occurred on the date the adjusting supplemental award was issued to settle the program disallowance. The collection will be considered timely, thereby satisfying debt collection criteria, if the following actions take place:

- o The issuance of the grant award reduction occurs within 15 days of the expiration of the State's allowed appeal response time or;
- o The issuance of the negative award occurs within 15 days of the DAB's decision upholding the disallowance or; the date on which the State decides to drop all or part of the appeal.
- o In cases where offset does not occur within 15 days of a final decision or in those cases where recovery is by cash, interest is assessed on delinquent debts from the date of the initial determination letter through the date of payment.

The recordation of the receivable and the subsequent award reduction may occur in the same month. However, it is still a requirement to record these transactions so that the data will be included in applicable Treasury Schedule 220-9's and other appropriate debt management reports.

Program contingent payables for disallowances are closely related to receivables for audit and program disallowances. They will be reflected on the Treasury Schedule 220-9's and other

appropriate debt management status reports with wording similar to the following:

"In addition to these receivables, there are \$(Amount) of contingent accounts payable-audit disallowances and \$(Amount) of contingent accounts payable-program disallowances from State's choosing to retain Federal funds while the claims are under appeal."

E. Recording and Recovery of Monetary Audit Disallowances

OPDIV's will follow the policies and procedures in 10-41-130-D for recording and recovering monetary audit disallowances. That section provides the Department-wide policies, processes, time frames and debt management reporting requirements. A matrix of major actions and accounting procedures for audit disallowances is contained in Exhibits 10-41-L and 10-41-M. The finance office is notified of an audit disallowance when it receives the initial disallowance letter and the Office of Inspector General Clearance Document (OCD). The OCD is a multiple part form (see Exhibit 10-41-V) which separates the financial information to be reported into the following parts:

Part I Monetary and/or Non-Monetary

Part II Final Disposition of Accounts Receivable

Part III Funds Put to Better Use

Part I contains four dollar amounts which are necessary to establish an Accounts Receivable. They are the Recommended, Sustained, Adjusted and Account Receivable amount. Part II contains three amounts which are necessary to arrive at the final disposition of the receivable. They are the Offset, Collected and Write-Off amounts. Each of these amounts are described below. Part III - Funds Put to Better Use contains amounts that are not to be entered into accounting systems.

- o Recommended Amount. This column contains the amount recommended by the OIG as the final adjustment for each finding. Recommendations for financial adjustments are made when costs are questioned in the audit. Costs may be questioned because of an alleged violation of a law, regulations or terms of a grant or contract. Costs may also be questioned because at the time of the audit they were not supported by proper documentation or the appropriate approvals had not been obtained.

- o Sustained Amount. The OPDIV/STAFFDIV program official should record in this column the amount sustained as the financial adjustment to be made. This amount can be sustained higher or lower than that recommended by the OIG. In those instances, an explanation of the change must be provided in the "Action Taken On Recommendation" section.
- o Adjusted Amount. The OPDIV/STAFFDIV should record in this column changes (+ or -) to the originally established Sustained Amount as the result of additional documentation or other findings prior to establishing the amount of the Accounts Receivable. Adjustments may also result from the assessment of interest and penalties. In any instance where there is an adjustment, a cross referenced explanation must be provided in the "Action Taken on Recommendation" section of the OCD.
- o Accounts Receivable Amount. The cognizant OPDIV/ STAFFDIV should record in this column the amount equal to the Sustained Amount less the Adjusted Amount. In instances where a check is received, prior to the issuance of the OCD, the Accounts Receivable Amount will equal the Sustained Amount less the amount of the check. The amount of the check must be recorded in the Collected Amount column of Part II. Upon receipt of its copy of the OCD, the OPDIV/STAFFDIV finance office should note the accounting entry reference applicable to the check to establish an audit trail between the OCD and the accounting entry.

The Finance office should also note the date the receivable is recorded on their books as an account receivable. Both entries should be noted in the "Documentation/Justification" section of the OCD. The accounting entry reference and date will not appear on the OCD sent to the OIG by the audit liaison office unless it is an amended or final OCD and the receivable was previously booked.

Note: Unless an Offset, Collection or Write-off occurs prior to the initial submission of the OCD to the OIG, there will be no entries in the following columns by the OPDIV/STAFFDIV until the action occurs.

- o Offset Amount. The OPDIV/STAFFDIV should record in this column the amount collected by offset against their own grants or other OPDIV/STAFFDIV/AGENCY grants. The offset is usually initiated by the program official and is

accomplished by issuing a negative grant award. In these instances an explanation must be provided in the "Action Taken on Recommendation" and the grant document referenced in the "Documentation/ Justification" sections. Additionally, in certain instances the offset will be made against future grants. When an offset is against a future grant or indirect cost rate adjustment, an explanation must be provided in the "Action Taken on Recommendation" section of the specific grant or rate adjustment and must include the expected time frame for action on the offset. A final OCD is prepared when action on a future offset occurs. Departmental policies require interest be applied to offset amounts and the interest should be included in the offset amount. Where interest is not to be applied an explanation must be provided in the "Action Taken on Recommendation" section.

- o Collected Amount. The OPDIV/STAFFDIV should enter in this column the amount of cash that was collected from the auditee as a result of the established Accounts Receivable. Upon receipt of its copy of the OCD, the OPDIV/STAFFDIV finance office should note the accounting reference applicable to the check to establish an audit trail between the OCD and the accounting entry. Interest, penalties and administrative cost transactions should be applied prior to any reductions in principal.
- o Write-Off Amount. The OPDIV/STAFFDIV should enter in this column the amount that was written off. The OPDIV/STAFFDIV must provide an explanation that cites the authority for the write-off along with the name of the authorizing official in the "Final Action Taken/ Documentation/Justification" section. A copy of the OCD along with detailed instructions for each Part regarding the specific data entries for each block and column; signatures required; document flow; amended OCD's; organizational responsibilities; and disposition of final OCD's is contained in Exhibit 10-41-V.

In addition, the determination document (Demand Letter or any other written communication between the OPDIV and the grantee) should accompany the OCD.

The audit disallowance should be promptly recorded in the accounting system in accordance with OMB Circular A-50. The initial entry will be the establishment of an accounts

Receivable for the audit disallowance pending appeal/litigation. This entry provides control over the audit disallowance prior to and during the appeal process. Monetary audit disallowances will be recovered through the issuance of supplemental negative award adjustments. Exhibit 10-41-L (pages 1-3) shows a matrix for required major OPDIV actions associated with monetary audit disallowances. Specific and detailed accounting procedures and transaction codes are shown in Exhibit 10-41-M.

F. Charging Interest and Other Costs.

1. General.

The issuance of an award reduction within 30 days of the date of the initial determination letter is considered a timely collection and therefore eliminates the need to charge interest.

The time elapsing from the initial disallowance decision to the date of the Departmental Appeals Board (DAB) decision can be several months or longer. During this time frame, interest charges should be accrued. Interest will be recorded in the accounting system when the DAB issues a decision sustaining the disallowance determination or at any time when the recipient agrees with the disallowance determination.

The amount of interest and administrative charges collected and recorded are to be deposited into the Miscellaneous Receipts Accounts of the Treasury.

2. Interest and Other Costs.

a. Medicaid Program. Section 1903(d)(5) of the Social Security Act authorizes the charging of interest on a disallowance from the date of the disallowance until the final decision (date of the DAB decision or the date the recipient agrees with the disallowance), if the State exercises its option to retain the federal funds. The interest rate for Medicaid disallowances is contained in 10-41-130 B (1).

b. All Other Public Assistance Programs. Unless otherwise authorized or prohibited by law or regulation, the Joint Federal Claims Collection Regulations (4 CFR Section 102) and the HHS Claims

Collection Regulations (45 CFR Section 30) authorizes the charging of interest on a disallowance from the date of the initial determination letter to the date payment is made unless payment is received within 30 days of the date of the initial determination letter. Interest and other costs will be assessed consistent with the criteria set forth in 10-41-130 B (2).

10-41-140 **PROGRAM AND AUDIT DISALLOWANCES-OTHER THAN PUBLIC ASSISTANCE TYPE AWARDS**

A. Other Than Public Assistance Type Awards

These types of awards are broadly categorized as Block Grants, Discretionary Grants and Formula Grants.

Block Grants. The Omnibus Reconciliation Act of 1981 created block grant programs for implementation by the Department of Health and Human Services. The block grants replaced approximately 33 categorical programs. Although the block grants programs are intended to confer great discretion to the States, some of them place limits on administrative expenses whereas others require State matching funds.

Discretionary Grants. Those grants in which the amount of the award and the decision to make the award are within the administrative discretion of the awarding agency. Typically among these types of awards are project period grants, research and demonstration grants.

Formula Grants. Those grants in which funds are allocated to a recipient (normally a State or local Government) in accordance with a distribution formula, statute or administrative regulation for activities of a continuing nature and not confined to a specific project. In some programs the formula grants also require the recipient to provide matching funds or in-kind services.

B. Background and Statutory Requirements

Block Grants

These awards were created by the Omnibus Reconciliation Act of 1981 and do not fall under the definition of Public Assistance programs although in some instances they may serve the same clientele covered in 10-41-130. They confer greater discretion

to the States in the administration of the programs. It should be recognized that Social Services-Title XX and Social Services-State and Local Training-Title XX were incorporated into the Social Services Block Grant by the Omnibus Reconciliation Act in FY 1982. HHS has the following block grant programs:

- ACF - Social Services
- Low Income Home Energy Assistance
- Community Services
- PHS - Alcohol and Drug Abuse
- Preventive Health and Health Services
- Maternal and Child Care

Independent audits are required to be performed either every year or every two years. OPDIV awarding components are also authorized to conduct compliance reviews in several of the block grant programs. Audit findings and results of compliance reviews are the basis for requiring the States to repay improperly expended grant funds. If a State refuses to repay the funds then offset (see paragraph 2. page 114) or withholding of future grant payments is authorized.

Discretionary Grants

These grants consist primarily of project period grants (i.e. demonstration, research, cooperative agreements), training and fellowship grants. Some of these grants may require matching funds. Expenditures are reported quarterly, semi-annually and/or annually on an annual Report of Expenditures. The grants are subject to audit by the Office of Inspector General and/or the General Accounting Office. Program officials may also disallow expenditures in their review process. Grantees are required to adjust their expenditures to the approved amount and either return the excess cash or use it for other grant awards by reducing their cash draws. Unused award authority is usually carried forward to the next budget period.

Formula Grants

HHS administers various formula grant programs. The formulae for each are prescribed by statute and promulgated through administrative regulation. The formulae are usually prorated based on the percent of State population to the total United States' population or target group population; per capita income levels; matching fund levels or simply a restricted dollar amount (e.g., \$1,400 per Full Time Student). Reporting is quarterly with an annual Report of Expenditures showing program

accomplishments and cumulative expenditure data. Some programs provide for unused award authority to be used in the subsequent year. Overpayments can occur as a result of an audit disallowance (e.g. mathematical error in application of a formula) and are collected using the established debt collection procedures.

C. Crosscutting Disallowance-Definition

This is a disallowance applicable to more than one program in one or more Federal agencies, assigned to a single Action Official to resolve the findings on behalf of his or her agency or in some cases several Federal agencies.

D. Recording and Recovery of OPDIV Program Disallowances

Program disallowances may result from an OPDIV determination that: (1) expenditures claimed by a grantee that are not allowable; (2) a grantee failed to remit interest earned on grant funds; or (3) excess cash was drawn down but never used.

All OPDIV/component organizations will follow the established Department-wide policy (Section 10-41-130-D) for the recording and recovery of OPDIV program disallowances. All overpayments for unallowable expenditure claims and any other disallowances shall be collected in full by offset, unless a cash repayment is received within 30 days from the date of the final determination letter. If the grantee appeals the final determination to either the OPDIV or the DAB or both, collection of the amount(s) under appeal will be delayed pending the outcome of the Department's final decision.

This process requires that the grantee (as well as the OPDIV Finance Office) be promptly notified by letter from an appropriate OPDIV official of the program disallowance and the amount of the disallowance. This letter should also require that the grantee notify the OPDIV within 30 days of the mailing date of the notification letter if the grantee is appealing the disallowance along with the amount being appealed; and must indicate whether they opt to immediately repay the disallowed amount being appealed or to retain the funds pending the outcome of the appeal. The grantee must also be advised that if payment is not received within 30 days from the date of the letter, interest will be charged on the unpaid portion of the debt from the date of the initial notification letter. All disallowance letters must also notify the grantee of the

Department's offset policy and are to be sent by "certified mail return receipt requested" to establish the receipt date by the grantee.

Cash repayments will be accepted at any time during the initial 30 day period following notification of the disallowance. If full payment has not been made after 30 days, the debt will be collected by offset. The offset approach is consistent with the requirements of the joint

Department of Justice and GAO regulations at 4 CFR Section 102.3 and Departmental regulations at 45 CFR Section 30.15.

1. Process for Collection By Offset When No Appeal Is Filed

If the grantee either notifies the OPDIV that it will not file an appeal or fails to communicate with the OPDIV, the disallowance shall be collected in full by the issuance of a negative grant award within 15 days of the expiration of the 30 day response time for appealing a formal disallowance. An exception to this policy can be made when the OPDIV documents and certifies that a lump sum collection of the full amount owed would defeat the purposes of the program. In these cases the grantee, in agreement with the Finance Office, must arrange to repay the debt through an extended payment plan. All agreement letters are to be sent by "certified" mail to establish the receipt date by the grantee.

2. Process for Collection By Offset When Appeal Is Filed

As stated above, when an appeal is filed, the grantee has the option of either retaining the funds under dispute (45 CFR Section 30.14) or returning them to the OPDIV pending a final decision by the DAB. If the grantee retains the funds and the DAB sustains the disallowance or any portion thereof, the OPDIV shall issue a negative grant award in the amount upheld plus any applicable interest charges. Interest shall be calculated for the period beginning on the date of the initial disallowance letter and ending on the date of the DAB decision. The OPDIV shall issue the negative grant award within 15 days following the final DAB decision.

[NOTE: The grantee may elect to remit the funds plus interest to the Government, provided that such funds are received within the 15 day time period following the DAB decision.]

When a grantee appeals a disallowance, opts to retain the funds during the appeal process and then decides to drop part of the appeal, the OPDIV responsible official should issue and forward a negative grant award for the portion of the disallowance which is no longer under appeal.

Applicable interest charges calculated from the date of the disallowance letter to the date the appeal is dropped should also be included. The OPDIV shall issue the negative grant award within 15 days from the date the appeal is withdrawn.

In cases where the DAB renders a split decision or remands to the OPDIV a compromise or an undetermined disallowance amount, the OPDIV is to reach agreement with the grantee within 60 days. Within this time period, the grantee has 30 days to provide additional documentation/information to the OPDIV to enable them to make a determination on allowable/unallowable amounts. The OPDIV has 30 days to review the information to determine unallowable amounts. If agreement is not reached within this time period, the OPDIV will either arrange for a follow-up audit or refer the issue back to the DAB for resolution.

The OPDIV is responsible for monitoring DAB decisions to ensure prompt grantee notification within five (5) workdays after receipt of the formal decision rendered by the DAB. The grantee shall be apprised of the intent to collect through offset, unless a check is received within 15 days of the date of the offset notification letter.

The OPDIV shall issue a negative grant award in the amount determined to be unallowable within 15 days unless the grantee remits a check for the amount of the debt, plus any interest owed. Information on such disallowance recoveries must clearly be shown on the negative award document or on a special cover sheet sent to the Finance Office.

3. Maintenance-of-Effort Requirement

Offset of Federal dollars against advances of grant funds does not, in and of itself, collect a debt. Unless the grantee replaces the Federal dollars with non-Federal funds and uses them on the project, the program has simply been reduced by the amount of the disallowance.

As authorized in 45 CFR 30.15(e), it is the policy of the Department to assure that program levels are maintained through a maintenance-of-effort requirement in cases where offset against advances of grant funds is used as a method of collection. This means that the grantee is required to maintain

the specified program level by providing non-federal resources in place of the federal dollars being offset. To effect this requirement, OPDIVs shall specify a non-Federal share contribution in the amount of the Federal dollars being offset on the negative award document. The net effect is that the overall program effort will remain unchanged. The negative grant award shall clearly state that the grantee is responsible and accountable for the [additional] non-federal share contribution. The [additional] non-Federal expenditures must be documented and verified during a subsequent audit or on-site compliance review.

If the OPDIV determines that the grantee is not likely to incur additional costs, the grantee must be removed from an advance method of payment and placed on reimbursement. An offset of the full amount will be made against a subsequent SF-270, "Request for Advance or Reimbursement," unless the OPDIV documents and certifies that a lump sum collection of the full amount owed would defeat the purposes of the program. In these cases the grantee, in agreement with the Finance Office, must arrange to repay the debt through an extended payment plan. All agreement letters are to be sent by "certified" mail to establish the receipt date by the grantee.

4. Timely Collection of Program Disallowances

Final collection or payment of the disallowance will be considered to have occurred on the date the adjusting negative grant award was issued and forwarded to the finance office to settle the program disallowance. Where a formal disallowance letter is issued, collection will be considered timely (i.e., satisfying debt collection criteria) if the issuance of the negative grant award occurs within 15 days after the expiration of the grantee's allowed response time. Furthermore, issuance of a negative grant award within 15 days of the DAB's decision upholding the disallowance or within 15 days following the date the grantee decides to drop part or all of its appeal will also be considered timely collection.

5. Accounting Procedures

Exhibit 10-41-J (pages 2 and 3) shows a matrix for required major OPDIV actions associated with disallowances. Specific and detailed accounting procedures and transaction codes are depicted in Exhibit 10-41-K.

E. Recording and Recovery of Audit Disallowances

The underlying principle for recording and recovery of audit disallowances is that amounts determined to be owed to HHS, regardless of the documentation backup, are to be submitted to the Finance office for formal recordation in the accounting system and are subject to debt collection regulations. The Finance office will be notified of an audit disallowance when it receives a disallowance letter and an OIG Clearance Document (OCD) from the Audit Resolution Office or by OS action officials since there is no resolution or liaison office within the Office of the Secretary. This same organizational structure may also exist in the Regional offices particularly when the regional action official and the regional Finance office are the parties involved in the disallowance.

The format and the content of the OCD are the same as explained in 10-41-130-E. A copy of the OCD along with detailed instructions for its completion are contained in Exhibit 10-41-V.

F. Charging Interest and Other Charges

The authority to charge interest, penalty charges and administrative costs are provided in the Debt Collection Act of 1982, the Treasury Financial Manual (TFM 6-8000), the Federal Claims Collection Standards (4 CFR Sections 101-105), and the HHS Claims Collection Regulations (45 CFR Section 30). See Section 10-41-90 for the policies to be followed to implement the legislative and administrative requirements contained in the referenced legislation and regulations.

Exhibit 10-41-N shows a matrix for required OPDIV actions for Audit Disallowances-Other Than Public Assistance programs. Specified and detailed accounting procedures and transaction codes are shown in Exhibit 10-41-O.

10-41-150 Loan Asset Sales

Loan asset sales occur when Federal agencies originate loans and sell them to non-Federal investors. The loan asset sale program was developed as a result of a Government program to reform Federal credit.

- A. Objectives of Loan Asset Sales Program. The primary objectives of the loan asset sales program are to:
1. Improve the management and performance of loan portfolios, including better loan origination, documentation and servicing;
 2. More precisely measure the Government subsidy inherent in direct loans in order to improve budgeting and accounting;
 3. Reduce agency resource needs by transferring servicing and collection functions to the private sector, when this results in net savings; and
 4. Count proceeds in the budget as offsetting collections in the year of sale.
- B. Loan Asset Sales Policy. Loan asset sales guidelines have been established to ensure that OPDIVs/components meet the objectives of the sales program and conform to established sales procedures. (See Exhibit 10-41-S Loan Asset Sales Guidelines.) These guidelines establish policy for non-recourse sales and standardize the loan asset sales process.
- C. Preparation of a Loan Portfolio for Sale. Each year during the preparation of the President's Budget, loan asset sale targets will be set. In their annual budget submissions OPDIVs/components should set forth sale plans and describe the credit management improvements to be realized as a result of the sales. OPDIVs/components should prepare portfolios of new loans and seasoned loans for sale separately by:
1. Performing a review of loans to verify the accuracy of payment history and loan balances, and availability of loan documentation, and to ensure they meet private sector standards for documentation and accounting information.
 2. Evaluating the credit performance of the portfolio by analyzing loan terms, Federal interest rates versus market rates, average outstanding balance, payment history,

number of loans, geographic location, delinquency/default rates, and historical trends; and

3. Making qualitative and quantitative determinations of the potential sale proceeds by comparing sales potential to previous loan sales from the same portfolio and/or similar Government portfolios that were sold, and by examining current market conditions affecting sales of similar private-sector portfolios.
 4. Obtaining OMB and Treasury approval before initiating sale program.
- D. Selection of Financial Advisor. Once the determination has been made to initiate a borrower's prepayment program or a loan sale to third parties, OPDIVs/components shall select a financial advisor through a competitive procurement process conducted in accordance with applicable procurement laws. The contract should provide for retention of the financial advisor on a multi-year basis. The financial advisor's responsibilities include:
1. Assessing the loan portfolio sales potential;
 2. Recommending selection of underwriters through a competitive process;
 3. Representing the interest of the OPDIV/component throughout the entire sales process, including assisting in negotiating the loan sales agreement and any representations and warranties;
 4. Providing guidance in the preparation of filings required by the Internal Revenue Service and the Security and Exchange Commission;
 5. Making recommendations on the acceptance of sale price determinations, consulting (with underwriters) on the fairness and advantage to the Government of the price;
 6. Analyzing projected proceeds from alternative types of sale structures;
 7. Recommending approval or disapproval of the sale structure proposed by underwriters.
 8. Advising the agency on appropriateness of underwriter's fees;

9. Identifying and recommending improvements in standards as well as in how the OPDIV/component originates, manages, and services its loans; and
 10. Performing a post-sale review as soon as possible after closing, including economic analysis of the sale and assisting the agency in development of a management improvement plan.
- E. Selection of Underwriter. In the case of a "securitized sale," the OPDIV/component is the seller of the loans, not the issuer of the debt offering. Underwriters must be selected by the OPDIV/component to conduct the sale. Underwriters are not under contract to the OPDIV/component and ultimately will work for the purchaser of the loans, who is also the issuer of the debt.
1. OPDIVs/components, in consultation with the financial advisor, shall require that the services of underwriters to carry out the sale be obtained through a non-federal competitive procurement.
 2. The underwriters are responsible for:
 - a. Representing the purchaser of the loans;
 - b. Recommending the structure of the sale;
 - c. Providing technical support for the purchaser's request to IRS for tax rulings on the proposed sale;
 - d. Drafting projections of sales proceeds;
 - e. Providing technical support in the preparation of the purchaser's filing for SEC approval of the sale;
 - f. Developing requirements for "master services" (purchasers of the loans may engage such organizations to service the portfolio and collect loan payments as their agent rather than perform these functions);
 - g. Finalizing sales agreements;
 - h. Pricing securities to be sold;
 - i. Purchasing securities; and

- j. Remitting gross proceeds to Treasury or the purchaser, who then provides net proceeds to the agency, in accordance with the statutes governing the loan program.

F. Sales Structure

1. OPDIVs/components shall establish a credit management/sales project team comprised of representatives for policy, program, contracting, accounting, finance and legal offices that will be involved with the sale. The list of team members -- identified by name, title, address and telephone number -- will be provided to OMB and Treasury.
2. The OPDIV/component, with the assistance of the financial advisor and the underwriters, will develop a detailed implementation schedule for the sale for submission to OMB and Treasury for approval.
3. With the assistance of the financial advisor and underwriters, the OPDIV/component shall prepare a preliminary sale structure and plan. OMB and Treasury must review and approve the plan prior to the OPDIV/component decision. Once the plan is approved the final authority to sell rests with the OPDIV/component.
4. The OPDIV/component shall consult with OMB and Treasury throughout the sales process to ensure that sales remain consistent with policy guidelines (see Exhibit 10-41-S).

G. Sale of Assets

1. Upon approval of the plan by both OMB and Treasury, OPDIVs/components shall enter into a sales agreement with a purchaser to conduct the sale.
2. It is incumbent upon the OPDIV/component, with the assistance of the financial advisor, to keep OMB and Treasury informed of the subsequent sales transactions.

H. Assessment of Credit Management Improvements.

OPDIV/components shall complete an evaluation of each asset sale 60 days after the sale. The evaluation shall include an economic analysis and a management analysis. The economic

analysis shall focus on the costs and benefits of the sale. The management analysis shall focus on potential credit management improvement in:

1. Financial systems;
2. Loan origination;
3. Debt servicing; and
4. Quantification of the dollar savings inherent in each credit management improvement implemented or propos

APPLICANT CERTIFICATION - FEDERAL COLLECTION POLICIES
EXAMPLE 1: CONSUMER DEBT

The Federal Government is authorized by law to take any or all of the following actions in the event your award results in a debt which becomes delinquent:

- o Report your name and account information to a credit bureau.
- o Assess additional interest and penalty charges for the period of time that payment is not made,
- o Assess charges to cover additional administrative costs incurred by the Federal government to service your account.
- o Offset amounts owed to you under other Federal programs.
- o Refer your account to a private collection agency to collect the amount due.
- o Refer your account to the Department of Justice for litigation in the courts.
- o If you are a current or retired Federal employee, take action to offset your salary or civil service retirement benefits.
- o If an individual, refer your debt to the Internal Revenue Service for offset against any amount owed to you as an income tax refund.
- o Report any discharged indebtedness to the Internal Revenue Service as taxable income.
- o Suspend processing of future applications until delinquency resolved.

All of these actions can and will be used to recover any debt owed when it is determined to be in the interest of the government to do so.

Certification

I have read and I understand the foregoing.

Signed: _____

Date: _____

APPLICANT CERTIFICATION - FEDERAL COLLECTION POLICIES
EXAMPLE 2: COMMERCIAL DEBT

The Federal government is authorized by law to take any or all of the following actions in the event your award results in a debt which becomes delinquent:

- o Report your delinquent account to a credit bureau.
- o Assess additional interest and penalty charges for the period of time that payment is not made.
- o Assess charges to cover additional administrative costs incurred by the Federal government to service your account.
- o Offset amounts owed to you under other Federal programs.
- o Refer your account to a private collection agency to collect the amount due.
- o Refer your account to the Department of Justice for litigation in the courts.
- o Suspend or debar you from doing business with the Federal government.

All of these actions can and will be used to recover any debt owed when it is determined to be in the interest of the government to do so.

Certification

I have read and I understand the foregoing.

Signed: _____
Title: _____
Company: _____
Date: _____

Secretary of State Letter
Inquiry on Defunct Corporation

Refer to: _____

Secretary of State
(Complete address)

Dear Sir:

This office has under consideration a matter concerning the indebtedness of the _____. Our records indicate that the corporation may no longer be doing business.

If it can be done without charge, we would appreciate the current address of the corporation as well as the names and addresses of its officers and information as to whether the corporation is currently legally incorporated in your state. In the event that the corporation has been officially dissolved, we would like to know who the receiver or trustee was, who received the corporate assets, and who is the agent for service of process of this corporation.

A pre-addressed envelope is enclosed for your use in replying.

Yours truly,

Suggested Format for Final Demand Letter

Refer to: _____

Mr. John D. Smith
100 Main Street
Anywhere, U.S.A. 10000

Dear Mr. Smith:

Further reference is made to your indebtedness to the United States for _____, in the amount of \$_____. The purpose of this letter is to afford you a final opportunity to voluntarily settle this matter.

The Department of Health and Human Services is required by law to take such action as is necessary to collect debts due the United States. You are advised that, as of this date, we are assembling all pertinent evidence and information relating to this debt, and are preparing your case for referral to the U.S. Department of Justice for the institution of suit against you without further notice.

As you were previously advised, pertinent regulations require the assessment of interest, penalty, and administrative charges of your debt. As of the date of this letter, those charges accrued are as follows: interest _____; penalty _____; administrative charges _____. The current interest rate is _____.

Therefore, I request that you immediately submit a payment in the total amount of \$_____, which includes interest, penalty and administrative charges, made payable to the Department of Health and Human Services. In the event that you are unable to make immediate payment in full, you should complete all items on the enclosed Financial Statement* (see Exhibit 10-41-D) and return it to us so that we may evaluate any alternatives that you may propose.

If we do not hear from you within 30 days, we will have no alternative but to refer your debt to the Department of Justice for collection. A pre-addressed envelope is enclosed for your remittance.

Yours truly,

Enclosures

*Do not use for employee debt.

DEBTOR'S FINANCIAL STATEMENT

DEBTOR'S PERSONAL INFORMATION

Last Name : _____ First: _____ MI: _____

Social Security #: _____ No. of Dependents: _____
Street: _____ City: _____ State: _____ ZIP: _____
Marital Status: _____

DEBTOR'S EMPLOYMENT AND INCOME INFORMATION

Employer: _____ Phone: _____
Address: _____
Present Position: _____ Annual Salary (Gross): _____
Rental Real Estate Owned (if any) _____

Rental Income (monthly): _____ Mortgage payment (monthly): _____
Other Income (monthly): _____ Source: _____

BANK INFORMATION:

Bank or Institution: _____ Type of Account: _____
Bank or Institution: _____ Type of Account: _____
Bank or Institution: _____ Type of Account: _____

LIST ALL EXISTING DEBTS: (Loans, Mortgages, Credit Cards etc.):

1.	Monthly Payment:	_____
2.	Monthly Payment:	_____
3.	Monthly Payment:	_____
4.	Monthly Payment:	_____
5.	Monthly Payment:	_____
6.	Monthly Payment:	_____
7.	Monthly Payment:	_____
8.	Monthly Payment:	_____
9.	Monthly Payment:	_____
10.	Monthly Payment:	_____

Subtotal _____
Attach additional sheet if needed + _____
Total Monthly obligations: _____

Debtor's Signature _____ Date: _____

CERTIFICATION OF INDEBTEDNESS

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OPDIV
Component
Street Address
City, State, and Zip Code

Name of Debtor _____

Address _____

1. I certify that I have examined the claim of the (Name of OPDIV) against _____, and find there is due the sum of \$_____.
 2.
 - a. Describe the debt and how it arose.
 - b. Specify the terms of the contract which were breached by the debtor.
 - c. Cite the evidence of file which supports:
 - (1) The conclusion that a breach occurred.
 - (2) How the amount owed was determined.
 - d. Cite any pertinent HHS regulations which authorize recovery of the debt upon which the claim is based.

Signature and Title of Official Signing Document

Telephone

THIS IS A SAMPLE FORMAT. IT IS NOT TO BE REPRODUCED IN ANY MANNER. IT WILL BE TYPED IN ITS ENTIRETY EACH TIME PREPARED

SAMPLE LETTER
REFERRAL OF DEBT TO ANOTHER FINANCE OFFICE
(See Section 10-41-110D. for Explanation)

June 13, 1987

Referral of Delinquent or Uncollectible Debt -- HCFA 87-3

TO: Director, Division of Accounting, HCFA

Enclosed in TAB A is evidence of unsuccessful attempts to collect excess cash that resulted from a deobligation of award _____ effective January 5, 1986, involving CAN 60500007. \$_____ excess cash was withdrawn by the recipient which has not been recovered. The details showing the history of the obligation, payments, disbursements, collections, etc. are in TAB B.

Interest has accumulated on the debt through June 30, 1987 in the amount of \$_____. The period covered by the interest charge, interest rate, and resultant calculations by month are in TAB C along with details supporting administrative cost charges of \$_____ and late penalties of \$ _____.

In July, 1987 our records will be adjusted to reflect this referral and in accordance with Departmental procedures, you should adjust your records accordingly.

If you have questions, please contact _____

at (Phone Number)

Director, Financial Assistance Financing Division

Enclosures: A, B, and C

TRANSACTIONS FOR TRANSFERRING ACCOUNTABILITY OF
ACCOUNTS RECEIVABLE

TC 062(R) Cancel the advance payment to PMS

1012 Disbursements	000-599	61.71
(Other than Payroll)	900-999	
1413 Advances to Government and Non-Government Agencies		

This TC 062(R) will be recorded by both PMS and the OPDIV, using a numbered journal voucher, to cancel the entry initially processed as a cash advance. Simultaneously, the OPDIV will need the following TC 070 or will forward the entry by journal voucher to be recorded by the Region if the advance is identified to a Regional award and collection action and/or writeoff is to take place at that level.

TC 070 Reclassifying overadvance made through the Payment Management System as account receivable for OPDIV/Region collection/writeoff.

1312 Refunds Receivable - Non-Government	000-599	
	900-999	61.71
1012 Disbursements (Other than Payroll)		

NOTE: This TC is to be used only with the 062(R) transaction. It reestablishes the advance of cash made to a recipient as an account receivable rather than as an advance of cash made in anticipation of services to be received through the grant award.

Alternatively, the OPDIV may record all TC 070 transactions at the headquarters level and transfer the receivable to the Regional office as follows:

TC 289 Transfer of Accounts Receivable

Sending OPDIV

1933	All Other Transfers	000-599	81.16
		900-999	

1313	General/Trust Fund Receipts Receivable		
	G Government		
	N Non-Government		

TC 28G Receipt of Uncollected General Fund Receipts

Receiving Region

1313	General/Trust Receipts Receivable	000-599	81.16
	G Government	900-999	
	N Non-Government		

1943	All Other Transfers		
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SAMPLE NOTICE OF EMPLOYEE INDEBTEDNESS

[Where necessary, explanations are provided for in brackets]

Date:

From:

Subject: Certification of (Type, i.e., Travel, etc.)
Overpayment

To: NAME: _____
SS NO: _____
TK NO: _____

A review of our records indicates that you received an:

- overpayment of salary
- overpayment of award

The precise amount of the overpayment is [\$____ GROSS, \$ ____ NET]. The audit and summary sheet are attached for your information explaining the reason for and when the overpayment occurred.

To settle this debt, you should make direct payment, by check or money order, in the full net amount of the indebtedness within 30 days from the date of this notice. Your personal check or money order should be made payable to OPDIV/component, and include your Social Security Number. If _____ does not receive payment by check or money order within 30 days from the date of this notice, salary deductions in amounts not to exceed \$_____ of your

disposable pay will be made biweekly until the amount of the debt, including interest and administrative costs, is satisfied.

Mail payment to:

You may elect to have this debt deducted from your salary by the minimum installment payment schedule, which is a lump sum payment for debts up to \$50.00, approximately \$50.00 each pay period (26) for debts of \$50.00 to \$1,500, and up to 78 equal payments for debts above \$1,500. You may also designate a greater amount to be deducted from your salary.

Within 15 days from the date of mailing [or hand delivery] of this notice you may :

- a. Request copies of agency records pertaining to the debt.
- b. Submit a written request for a review by an agency official of the existence or amount of the debt if you have reason to believe that you are not indebted, or the above mount is incorrect. The request must raise a genuine issue of fact or law. A request for this purpose is enclosed.

If you wish to challenge the existence or the amount of the overpayment through review, you should know that:

- a. the request must be in writing; must state each agency conclusion which is being disputed and the reasons for the dispute, and must identify supporting witnesses with knowledge and include or identify supporting documents.
- b. The request must, on its face, sufficiently raise a genuine issue of fact or law.
- c. Unless you make direct payment or request collection by salary deduction, the overpayment will not be collected while a timely filed request for review or for an alternative repayment schedule is under consideration by the agency. However, interest at an annual rate of _____percent [The rate is the current value of funds rate published in the Treasury Financial Manual and in effect at the time of notice] will accrue from the date of mailing of this notice.
- d. If the request is spurious, frivolous, or otherwise fails to raise a genuine issue of fact or law, the request will be denied. Also, the debt will be deemed to be overdue 31 days from the date of mailing of this notice, and you may be charged administrative collection costs and, if the debt is more than 90 days overdue, late payment penalties or _____percent per annum.

- e. You may be subject to (1) disciplinary action under 5 CFR Part 752 or other applicable authority, and (2) criminal or civil penalties under applicable law for any knowingly false, spurious, or frivolous statements, representations, or evidence made or presented.

Signature

Attachment[s]

SAMPLE INDEBTEDNESS PAYMENT AGREEMENT ELECTION FORM

Please check the appropriate space below, sign the sheet, and return
it to _____

_____ I elect to pay the full amount of my indebtedness.

My check or money order is enclosed for the Net amount.

_____ I elect to pay my indebtedness through biweekly deductions
from my salary using the minimum installment payment schedule.
I am aware that the debt could be subject to interest and
administrative costs.

_____ I elect to pay my indebtedness through biweekly deductions
from my salary of \$_____. I understand that this amount can
be larger than the minimum installment payment and that the
debt could be subject to interest and administrative cost.

Signed: _____ Date: _____

Social Security Number: _____

SAMPLE
REQUEST FOR REVIEW OF INDEBTEDNESS BY AN AGENCY OFFICIAL

Please check the appropriate space below, sign the sheet, and return it to:

If you request a review, please enclose a separate statement providing the conclusions which you are disputing and the reasons for the dispute. Also, identify any supporting witnesses, and include or identify any documents that support your request. A return envelope is enclosed for your use.

_____ I request that an official review my indebtedness. A separate statement is enclosed.

_____ I request a payment schedule to satisfy my indebtedness below the minimum payment schedule because of extreme financial hardship. A separate statement is enclosed indicating the true nature of the hardship.

_____ I do not request a review of my indebtedness by an agency official.

Signed: _____ Date: _____

Social Security Number: _____

SAMPLE ACKNOWLEDGEMENT LETTER

Date:

Dear [] :

This is to acknowledge receipt of your request for a hearing on your indebtedness to the United States. It was received in this office on [_____].

Your request will be reviewed for sufficiency and you will be notified of the results of the review and subsequent action that will be taken no later than [_____date_____].

Sincerely yours,

[]

SAMPLE NOTICE OF HEARING DENIAL

[Where necessary, explanations are provided in brackets]

Dear []:

This is to inform you that your request of [use date of employee's request] for review of [either the existence or the amount] of your indebtedness to the Department of Health and Human Services has been denied. This action was taken because your request, on its face, did not sufficiently raise a genuine issue of fact or law. [If the request raised a genuine issue of fact or law, it can be denied if the employee failed to identify supporting witnesses with knowledge and failed to include or identify supporting documents.]

[Signature]

Certification for Collection of Employee
Delinquent Debt by Salary Offset

Date:	Type of debt	(1)
	Amount	(2)
	SS#	(3)
	TK#	(4)

From: (5)

Subject: Recovery of Employee Debt Due U.S. Government

To: Director, Division of Personnel and Payroll Operations
(DPPO)
Office of the Secretary

(6) has an outstanding indebtedness with
the Department of Health and Human Services.

We have been unsuccessful in our attempts to recover the outstanding
indebtedness of the above named employee. We are requesting you to
withhold up to \$(7) of the employee's disposal pay per pay
period, until the debt is satisfied.

The SF-1081's or other document(s) evidencing collection to the
appropriate account should be mailed to the following address:

(8)

Contact Name and Phone Number: (9)

Apply to Agency Location Code: (10)

Payroll Number (11)

Appropriation (12)

I certify that this claim is correct and that all due diligence
requirements by law/regulation have been afforded the employee.

Signed
(13)

- (14) Attachments:
 - 1. Copies of Delinquent Notice(s)
 - 2. Copy(ies) of Advance of Funds
 - 3. Copy of Other Evidence of Indebtedness
- (1) Identify the type of debt (e.g., travel advance, phone bill).
- (2) Total amount of debt.
- (3) Social Security number of employee owing the debt.
- (4) Timekeeper number of employee owing the debt.
- (5) Office requesting the offset.
- (6) Full name of the employee owing debt.
- (7) Amount to be withheld, each pay period.
- (8) Address of accounting office where funds are to be transferred after collected from debtor.
- (9) Name and phone number of contact person familiar with the indebtedness.
- (10) Agency Location Code (ALC).
- (11) Payroll Number (CAN).
- (12) Appropriation to be credited for the collection.
- (13) Signature of Finance Officer
- (14) Documents evidencing employee debt.

PUBLIC ASSISTANCE TYPE AWARDS
MATRIX OF MAJOR ACTIONS FOR PROGRAM DEFERRALS

Deferral Action	Grant Award Action	-and-	Accounting Action
I. Deferral Taken	Issue Supplemental Award - Decreasing Funds TC 050 (R)		Record Contingent Payable - Deferral TC 501
II. State Withdraws Expenditure Claims	No Action Required (OPDIV in Possession of Funds)		Reverse Contingent Payable - Deferral TC 501 (R)
III. OPDIV Approves State Expen- ditures Claims	Issue Supplement Award - Increasing Funds TC 050		Reverse Contingent Payable - Deferral TC 501 (R) Record Expenditures TC 084/181 **
IV. OPDIV Deter- mines Defer- red State Expenditures Claims are Unallowable and Issues Disallowance	No Action Required (OPDIV in Possession of Funds)		Reverse Contingent Payable - Deferral TC 501 (R) Record Contingent Payable - Program Disallowance TC 503 *
V. a. OPDIV Cannot Make Timely Determina- tion on - Allowabi- lity of Deferral	Issue Supplemental Award - Increasing Funds TC 050		Reverse Contingent Payable - Deferral TC 501 (R) Record Expenditure TC 084/181 **

PUBLIC ASSISTANCE TYPE AWARDS
 MATRIX OF MAJOR ACTIONS FOR PROGRAM DEFERRALS

Deferral Action	Grant Award Action	-and-	Accounting Action
b. Upon OPDIV Determination of Allow- ability:			
- State Expenditure Claims Approved	No Action Required		
- State Expenditure Claims Not Appro- ved and Dissallow- ance Issued	Issue Supplemental Award - Decreasing Funds (To return Funds to OPDIV) TC 050 (R)		Reverse (V.a.) Expen- ditures TC 084/181 (R) Record Contingent Payable - Program Disallowance TC 503 *

NOTE: OPDIV must determine what documentation will be used to support accounting transactions.

- These actions resulting in a disallowance are repeated on next page: Program Disallowance Action.

** OPDIV has the option to record gross expenditure from the submitted report of Expenditures and adjust the basis of issuance of deferral/disallowance following review by Program Official in lieu of recording approved expenditures following the review and determination of the Program Official.

PUBLIC ASSISTANCE TYPE AWARDS
 MATRIX OF MAJOR ACTIONS FOR PROGRAM DEFERRALS

Program Disallowance Action	Grant Award Action	-and-	Accounting Action
I. Disallowance Issued As a Result of a Deferral	Supplemental Award Issued - Decreasing Funds (State has no Option to Keep Funds) TC 050 (R)		From Deferral Action IV. and V.b. Contingent Payable - Program Disallowance TC 503
<u>FURTHER ACTIONS UNRELATED TO DEFERRAL</u>			
II a. Disallow- ance Issued (OPDIV to Hold Funds)	Issue Supplemental Award - Decreasing Funds TC 050 (R)		Record Contingent Payable - Program Disallow- ance TC 503
b. Disallow- ance Issued (State to Hold Funds)	No Action Required		Record Receivable - Anticipated Reco- very - Program Disallowance TC 342
III. Disallowance Not Appealed	No Action Required		Reverse Contingent Payable -
a. OPDIV Hol- ding Funds			Program Disallow- ance TC 503 (R)
b. State Hol- ding Funds	Issue Supplemental Award - Decreasing Funds TC 050 (R)		Reverse Receivable - Anticipated Reco- very - Program Disallowance TC 342 (R)

PUBLIC ASSISTANCE TYPE AWARDS
 MATRIX OF MAJOR ACTIONS FOR PROGRAM DEFERRALS

Program Disallowance Action	Grant Award Action	-and-	Accounting Action
IV. Disallowance Appealed	Issued Supplemental Award - Decreasing		Reverse Receivable - Anticipated Recovery-
a. State Opts to Return Funds	Funds TC 050 (R)		Program Disallowance TC 342 (R) and Record Contingent Payable - Program Disallowance TC 503
b. State Opts to Retain Funds	No Action Required		Retains Anticipated Recovery status, al- though interest accrues from disal- lowance decision, interest will be recorded retroacti- vely following a sustained GAB decision

DEPARTMENTAL APPEALS BOARD ACTIONS

V. a. Board <u>Sustains</u> State's Appeal	No Action Required	Reverse Contingent Receivable - Program Disallowance TC 342 (R)
1. State Holding Funds		Record Expenditures TC 084/181 **

PUBLIC ASSISTANCE TYPE AWARDS
 MATRIX OF MAJOR ACTIONS FOR PROGRAM DEFERRALS

Program Disallowance Action	Grant Award Action	-and-	Accounting Action
2. OPDIV Holding Funds	Issue Supplemental Award - Increasing Funds TC 050 Advise State to In- crease Expenditures		Reverse Contingent Payable - Program Disallowance TC 503 (R) Record Expenditures TC 084/181 **
b. Board <u>Denies</u> State's Appeal 1. State Holding Funds	Issue Supplemental Award - Decreasing Funds (In line with DAB Decision and for Applicable Interest) TC 050 (R) Advise State to Reduce Expenditures		Reverse Contingent Receivable - Program Disallowance TC 342 Record Interest and Disburse from Appropriation TC 139 and TC 190 Deposit Interest to Miscellaneous Receipts Treasury TC 224
2. OPDIV Holding Funds	No Action Required (Award was Previously Adjusted and OPDIV has Funds)		Reverse Contingent Receivable - Program Disallowance TC 503 (R)

PUBLIC ASSISTANCE TYPE AWARDS
 MATRIX OF MAJOR ACTIONS FOR PROGRAM DEFERRALS

Program Disallowance Action	Grant Award Action	-and-	Accounting Action
c. Board <u>Reduces</u> Disallowance	Issue Supplemental Award - Decreasing Funds (In line with DAB Decision and for Applicable Interest the Reduced Amount of Disallowance to be Collected) TC 050 (R) for the amount of disallow- ance expenditures plus interest accrued.		Reverse Contingent Receivable - Program Disallowance (For Entire Amount of Program Disallowance) TC 342 (R) Record Interest on the Amount Accrued for the Adjusted Dis- allowance & Disburse from Appropriation TC 139 and TC 190 Deposit Interest Miscellaneous Receipts of Treasury TC 224 Record Expenditures for or the Amount Approved TC 084/181 **
1. State Holding Funds			
2. OPDIV Holding Funds	Issue Supplemental Award - Increasing Funds (In Line with DAB Decision) TC 050 for the Expenditures Approved		Cancel Contingent Payable - Program Disallowance (For Entire Amount of Pro- gram Disallowance TC 503 (R) Record Expenditures for Amount Approved TC 084/181 **

PUBLIC ASSISTANCE TYPE AWARDS
MATRIX OF MAJOR ACTIONS FOR PROGRAM DEFERRALS

Program Disallowance Action	Grant Award Action	-and-	Accounting Action
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NOTE: OPDIV must determine what documentation will be used to support accounting transactions, i.e., grant award, letters, etc.

** OPDIV has the option to record gross expenditures from the submitted Report of Expenditures and adjust on the basis of issuance of deferral/disallowance following review by Program official in lieu of recording approved expenditures following the review and determination of the Program Official.

ACCOUNTING PROCEDURES FOR PUBLIC ASSISTANCE TYPE
PROGRAM DEFERRALS AND DISALLOWANCES

Recording of Expenditures

Expenditures are approved based upon a review by the Program/Grant Official and by the Departmental Appeals Board (DAB) when there is an appeal by the program participant of any amounts disallowed. Expenditures not approved result in a deferral or disallowance. These procedures are written on the basis that expenditures are recorded in the accounting records when approved by the program/grant official, following the decision to defer or disallow a portion of the participant's reported expenditures. However, OPDIVs may elect to record, prior to the completion of the review, the gross expenditures as submitted by the program participant and subsequently adjust the recorded expenditures for any portion to be deferred or disallowed. OPDIVs also may elect to record expenditures based upon program participant's reported cash disbursements from the Payment Management System.

Deferral Notice is Issued (OPDIV To Hold Funds)

These entries are made at the time the deferral is subtracted from the final award or a negative award is issued to recover the amount deferred.

(1) TC 501
O.C. 25, 41

DEBIT	9700	Contingent Accounts - Control
CREDIT	9771	Contingent Accounts Payable - Deferrals

-and-

(2) TC 050 (R)
O.C. 25, 41

DEBIT	4800	Undelivered Orders
CREDIT	4612	Allowances Available for Commitment/ Obligation

Program Participant Does Not Contest The Deferral And Withdraws
Claimed Expenditures

When the participant agrees with the deferral action and does not pursue action to substantiate the expenditures, the prior entry to hold the deferral as a contingent payable is canceled. No further action is required as the OPDIV has recovered funds by the issuance of a decreased award.

(3) TC 501 (R)
O.C. 25, 41

DEBIT	9771	Contingent Accounts Payable - Deferral
CREDIT	9770	Contingent Accounts - Control

Review Of Information From Participant On Deferred Claims

Following a review of the information submitted by the program participant concerning the deferral of the approval of expenditures, the Program/Grant Official will approve or disapprove the expenditures. The accounting treatment differs depending on the time that is taken in validating the claim. Entries 4 through 8 apply when the review takes place within the time limit established with the OPDIV retaining funds. Entries 9 through 11 apply when the time expires and the OPDIV returns the funds to the program participant pending completion of the review of deferred expenditures. The end result is that the deferral is canceled when expenditures are approved or the deferral becomes a formal disallowance when expenditures are disapproved.

Deferred Expenditures Are Approved (Within Review Time Limit -
OPDIV Holding Funds)

When the review is completed in the time permitted the entries will be to cancel the deferral, increase the current award or issue a supplemental award (to cancel the reduction taken when the deferral was issued), and to record the approved expenditures.

(4) TC 501 (R)
O.C. 25, 41

DEBIT	9771	Contingent Accounts Payable - Deferrals
CREDIT	9770	Contingent Accounts - Control

-and-

- (5) TC 050 (R)
O.C. 25, 41

DEBIT	4612	Allowances Available for Commitment/Obligation
CREDIT	4800	Undelivered Orders

-and-

- (6) TC 084 (R) or TC 181 (B) according to OPDIV procedure for
recording expenditures or cash disbursements from PMS.*
OC 25, 41

DEBIT	4800	Allowances Available for Commitment/Obligation
CREDIT	4900	Expended Appropriation

Deferred Expenditures Are Not Approved - Disallowance Notice Is
Issued (OPDIV Holding Funds)

These entries are made to move the deferred claim to a formal
disallowance when program participant does not respond to the
deferred notice or after review of the information requested a
decision is made to disallow the expenditures.

- (7) TC 501 (R)
O.C. 25, 41

DEBIT	9771	Contingent Accounts Payable - Deferral
CREDIT	9770	Contingent Accounts - Control

-and-

- (8) TC 503
O.C. 25, 41

DEBIT	6905	Other Expenses - Unfunded
CREDIT	2920	Contingent Liability - Unfunded

*NOTE: For simplification, only the (B) funding portion of this
transaction is shown in these procedures.

Funds Returned To Program Participant Pending Review Of Claim For
Deferred Expenditures

If the review is not completed within the time permitted according to statutory limitations the OPDIV is required to increase a current grant award or issue a supplemental award (to cancel the previous reduction taken when the deferral was issued) which permits the participant to hold the funds pending resolution of the deferred claim. The OPDIV will record the expenditures as approved pending resolution.

(9) TC 050
O.C. 25, 41

DEBIT	4612	Allowances Available for Commitment/Obligation
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CREDIT	4800	Undelivered Orders
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-and-

(10) TC 501 (R)
O.C. 25, 41

DEBIT	9771	Contingent Accounts Payable - Deferrals
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CREDIT	9770	Contingent Accounts - Control
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-and-

(11) TC 084 (B) or TC 181 (B) according to OPDIV procedures for recording expenditures or cash disbursements from PMS.
O.C. 25, 41

DEBIT	4800	Undelivered Orders
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CREDIT	4900	Expenses Appropriations
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When the review is complete the following entry will be made to record any disapproval of expenditure as a formal disallowance:

Deferred Expenditures Are Approved (Program Participant Holding Funds)

No action or accounting entries are required as funds were returned and expenditures recorded as approved in (9) and (11).

Deferred Expenditures Not Approved - Disallowance Notice Is Issued
(Program Participant Holding Funds)

These entries are made to move the deferred claim to a disallowance and to decrease the current award or issue a negative award to recover the funds returned to the program participant when the deferred action was not completed within the proper time frame.

NOTE: (B) entry only of TCs 084 and 181 is shown to shorten procedures.

(12) TC 503
O.C. 25, 41

DEBIT	6905	Other Expenses - Unfunded
CREDIT	2920	Contingent Liability - Unfunded

-and-

(13) TC 050 (R)
O.C. 25, 41

DEBIT	4800	Undelivered Orders
CREDIT	4612	Allowances Available for Commitment/Obligation

-and-

(14) Reverse (11) expenditures approved pending completion of review

DEBIT	4900	Expended Appropriations
CREDIT	4800	Undelivered Orders

Disallowance Notice Is Issued (No Deferral Taken) (OPDIV To Hold Funds)

This entry is made at the time the disallowance is subtracted from the final award or a negative award is issued for the disallowed amount. A companion entry will be the recording of the expenditures from the quarterly report, according to OPDIV option to initially record reported expenditures or the later approved expenditures. Expenditures may also be recorded from PMS cash disbursements data.

(15) TC 503
O.C. 25, 41

DEBIT	6905	Other Expenses - Unfunded
CREDIT	2920	Contingent Liability - Unfunded

-and-

(16) TC 050 (R)
O.C. 25, 41

DEBIT	4800	Undelivered Orders
CREDIT	4612	Allowances Available for Commitment/Obligation

Disallowance Notice Is Issued (No Deferral Taken) (Program
Participant To Hold Funds)

This entry is made at the time the review of the expenditures is completed but prior to the adjustment of the award; thus, the program participant retains the funds at this point. Later, if an appeal is to be made, the program participant has the option to return the funds (See entry 23).

(17) TC 342
O.C. 25, 41

DEBIT	131A	Accounts Receivables - Anticipated Recoveries - Program Disallowances
CREDIT	1319	Allowance for Loss on Accounts Receivable - Unfunded

Statutes permit the program participant to appeal disallowances to the DAB within 30 days of the notification. The accounting entries differ according to the participant's decision on appealing, the participant's option to return the funds in dispute (if an award reduction has not been previously made to recover funds), and the final determination of the DAB.

Disallowance Not Appealed (OPDIV Holding Funds)

The Program/Grant Official must notify the Finance Office when the participant chooses not to appeal. Since the award has been previously adjusted for the amount disallowed, the record may be closed by canceling the contingent liability that was established at the time the disallowance notice was issued.

(18) TC 503 (R)
O.C. 25, 41

DEBIT	2920	Contingent Liability - Unfunded
CREDIT	6905	Other Expenses - Unfunded

Disallowance Not Appealed (Program Participant Holding Funds)

When the program participant chooses not to appeal the amount disallowed and the award has not been previously adjusted, entries should be made to collect the amount by reducing a current award or issuing a negative award and to close the receivable account that was established for the anticipated recovery. These entries are made based upon notification of the Program/Grant Official and the award document.

(19) TC 342 (R)
O.C. 25, 41

DEBIT	1319	Allowance for Loss on Accounts Receivable - Unfunded
CREDIT	131A	Accounts Receivable - Anticipated Recovery - Program Disallowances

-and-

(20) TC 050 (R)
O.C. 25, 41

DEBIT	4800	Undelivered orders
CREDIT	4612	Allowances Available for Commitment/Obligation

Program Participant Appeals Disallowance - Opts to Return Funds
Pending Resolution by DAB

Under specific rules, the program participant has the option of returning the disputed funds to the OPDIV pending resolution by the DAB. This action is usually taken to avoid the interest that will have accrued if the disallowance is sustained. Program/Grant Officials must notify the Finance Office in writing of this decision. The document will support the entries to change the record from an anticipated recovery to a contingent payable. An additional entry must be made to record the reduction of a current award or the issuance of a negative award for the recovery of the funds.

(21) TC 342 (R)
O.C. 25, 41

DEBIT	1319	Allowance for Loss on Accounts Receivable - Unfunded
CREDIT	131A	Accounts Receivable - Anticipated Recoveries - Program Disallowances

-and-

(22) TC 503
O.C. 25, 41

DEBIT	6905	Other Expenses - Unfunded
CREDIT	2902	Contingent Liabilities - Unfunded

-and-

(23) TC 050 (R)
O.C. 25, 41

DEBIT	4800	Undelivered Orders
CREDIT	4612	Allowances Available for Commitment/Obligation

Program Participant Appeals Disallowance - Opts to Retain Funds
Pending Resolution by DAB

When the program participant does not exercise his option to return the disputed funds, the Finance Office will accrue interest for the Medicaid program beginning on the date the amount was formally disallowed for each month until the appeal is resolved. The estimate may be computed at a flat rate of interest that approximates the prescribed computation. For other programs, the interest will accrue beginning 30 days after the date of the determination letter at the Treasury rate current at that point in time. Although interest is accruing as described, recordation will be retroactive following a sustained decision by the DAB.

Disallowance Appeal Sustained by GAB (Program Participant Holding Funds)

When the program disallowance appeal is sustained and expenditures are approved by the DAB the Program/Grant official must notify the Finance Office. This notice may be a copy of the DAB decision. Since the participant has opted to retain the disputed funds, no adjustment to the award is required. Entries are needed to cancel the anticipated recovery of the disputed funds and to accept the approved expenditures.

(24) TC 342 (R)
O.C. 25, 41

DEBIT	1319	Allowance for Loss on Accounts Receivable - Unfunded
CREDIT	131A	Accounts Receivable - Anticipated Recovery - Program Disallowance

-and-

(25) TC 084 (B) and TC 181 (B) according to OPDIV procedure for recording expenditures or cash disbursements from PMS.
O.C. 25, 41

DEBIT	4800	Undelivered Orders
CREDIT	4900	Expended Appropriations

Disallowance Appeal Sustained by DAB (OPDIV Holding Funds)

When the program disallowance appeal is sustained and expenditures are approved by the DAB the Program/Grant Official must notify the Finance Office. This notice may be a copy of the DAB decision paper. Since an earlier award was adjusted to recover the amount in dispute, a current award must be increased or a supplemental award issued. Entries must also be made to cancel the contingent liability that has been established and to accept the approved expenditures.

(26) TC 503 (R)
O.C. 25, 41

DEBIT	2920	Contingent Liability - Unfunded
CREDIT	6905	Other Expenses - Unfunded

-and-

(27) TC 050
O.C. 25, 41

DEBIT	4612	Allowances Available for Commitment/Obligation
CREDIT	4800	Undelivered Orders

-and-

(28) TC 084 (B) and TC 181 (B) according to OPDIV procedure for recording expenditures or cash disbursements from PMS.
O.C. 25, 41

DEBIT	4800	Undelivered Orders
CREDIT	4900	Expended Appropriations

Disallowance Appeal Denied by DAB (Program Participant Holding Funds)

When the program disallowance appeal is denied and expenditures are not approved by the DAB, the Program Grant Official must notify the Finance Office. This notice may be a copy of the DAB decision. Since the award was not previously adjusted and the participant opted to retain the disputed funds during the appeal process, entries are

required: (1) to compute and record the actual interest at the applicable rate from the date of the disallowance letter to the date of the Board's final determination; (2) to collect the disallowed amount including accrued interest by reducing a current award or issuing a negative award, (3) to close the receivable that was established for the anticipated recovery, and (4) to transfer the amount recovered from the program appropriation to the Miscellaneous Receipt account.

(29) TC 139 (for computation of actual interest)
O.C. 61.4W Accrued Interest Earned - Program Disallowance

DEBIT 1324 Accrued Interest or Gen/Tr Fund
Receipts Receivable

CREDIT 5302 Interest Income Earned - Gen/Tr Fund
Receipts

-and-

(30) TC 342 (R) (record collection of disallowance)
O.C. 25, 41

DEBIT 1319 Allowance for Loss on Accounts
Receivable - Unfunded

CREDIT 131A Accounts Receivable - Anticipated
Recovery - Program Disallowances

-and-

(31) TC 050 (R) (recover funds by reduction of award for
disallowance and interest)
O.C. 25, 41

DEBIT 4800 Undelivered Orders

CREDIT 4612 Allowances Available for
Commitment/Obligation

-and-

- (32) TC 190 (for the interest to be transferred to Miscellaneous Receipts
O.C. 25, 41

DEBIT	6101	Operating/Program Expense
CREDIT	1012	Disbursements (Other than Payroll)

-also-

DEBIT	4612	Allowances Available for Commitment/Obligation
CREDIT	4900	Expended Appropriations

-and-

- (33) TC 224 (record collection (deposit) of interest)
O.C. 61.7D Interest Collected - Audit and
Program Disallowance

DEBIT	3620	Funds Returned to Gen/Tr Funds, Miscellaneous Receipts
CREDIT	1324	Accrued Interest on Gen/Tr Fund Receipts Receivable

Disallowance Appeal Denied by DAB (OPDIV Holding Funds)

When the program disallowance appeal is denied and expenditures are not approved by the DAB, the Program/Grant Official must notify the Finance Office. This notice may be a copy of the DAB decision paper. Since the OPDIV previously adjusted the award at the disapproval of the expenditures or later when the program participation opted to return the funds pending the appeals process, the only entry required is to cancel the contingent payable that was established.

- (34) TC 503 (R)
O.C. 25, 41

DEBIT	2920	Contingent Liabilities - Unfunded
CREDIT	6905	Other Expenses - Unfunded

Disallowance Reduced by DAB (Program Participant Holding Funds)

When the DAB denies a part of the claimed expenditures and approves the remaining sum, the entries are the same as in the section Disallowance Appeal Denied (Program Participant Holding Funds) except that recovery of interest TC 139, TC 190 and TC 224 is based upon the lowered disallowance amount. The TC 342 (R) is for the initial amount of the disallowance, and the TC 050 is the net of the disallowance to be recovered plus the interest.

In addition an entry should be made for the portion of the approved expenditures.

- (35) TC 084 (B) and TC 181 (B) according to OPDIV procedure for recording expenditures or cash disbursements from PMS.
O.C. 25, 41

DEBIT	4800	Undelivered Orders
CREDIT	4900	Expended Appropriations

Disallowance Reduced by DAB (OPDIV Holding Funds)

In this instance when the disallowance has been adjusted by the DAB, the entry is the same as in the section Disallowance Appeal Denied (OPDIV Holding Funds) except that additional entries must be entered for the supplemental award to obligate funds and to accept expenditures for the portion of the approved sum.

- (36) TC 050
O. C. 25, 41

DEBIT	4800	Undelivered Orders
CREDIT	4612	Allowances Available for Commitment/Obligation

-and-

- (37) TC 084 (B) and TC 181 (B) according to OPDIV procedure for recording expenditures or cash disbursements from PMS.
O.C. 25, 41

DEBIT	4800	Undelivered Orders
CREDIT	4900	Expended Appropriations

PUBLIC ASSISTANCE TYPE AWARDS
 MATRIX OF MAJOR ACTIONS FOR AUDIT DISALLOWANCES

Audit Disallowance Action	Grant Award Action	-and- Accounting Action
<u>I. AUDIT DETERMINATION</u>		
Issuance of OCD/ Determination letter	No Action Required	Record Accounts Receiv- able - Anticipated Recovery - Audit Disallowance TC 333
<u>II. NO APPEAL</u>		
State Chooses Not To Appeal	Issue Supplemental Award - Decreasing Funds TC 050 (R)	Reverse Accounts Receivable - Anticipated Recovery- Audit Disallowance TC 333 (R)
	Advise State to Reduce Expendi- tures for Disal- lowance Accepted	Reestablish Firm Accounts Receivable - Audit Disallowance TC 335 Record Collection TC 345 Amend Prior Approved Expenditures TC 084/181 (R)
<u>III. APPEAL ACTION</u>		
Disallowance Ap- pealed	No Action Required	No Action Required (Status remains at TC 333 Antici- pated Recovery)
a. State Opts to Retain Funds		
b. State Opts to Return Funds	Issue Supplemental Award - Decreasing Funds TC 050 (R)	Reverse Accounts Receiv- able - Anticipated Recovery - Audit Disallowance TC 333 (R) Record Contingent Pay- able - Audit Dis- allowance TC 503

PUBLIC ASSISTANCE TYPE AWARDS
 MATRIX OF MAJOR ACTIONS FOR AUDIT DISALLOWANCES

Audit Disallowance Action	Grant Award Action	-and- Accounting Action
IV. <u>GRANTS APPEALS BOARD ACTION</u>		
a. Board <u>Sustains</u> State's Appeal	No Action Required (Prior expendi- tures were correct)	Reverse Accounts Re- ceivable - Antici- pated Recovery - Audit Disallowance TC 333 (R)
1.State Holding Funds		
2.OPDIV Hol- ding Funds	Issue Supplemental Award - Increasing Funds TC 050 (To reestablish funds returned - See III b. above)	Reverse Contingent Payable - Audit Disallowance TC 503 (R)
b. Board <u>Denies</u> State's Appeal	Issue Supplemental Award - Decreasing Funds (For DAB Denied Amount Plus Interest) TC 050 (R) (Prior expendi- tures were <u>not</u> correct)	Reverse Account Re- ceivable - Antici- pated Recovery - Audit Disallowance TC 333 (R)
1.State Holding Funds		Reestablish Firm Accounts Receivable - Audit Disallowance TC 335
		Record Collection TC 345
	Advise State to Reduce Expendi- tures for Disallowance Sustained	Record Interest and Disburse from Appro- priation. TC 139 and TC 190. Deposit to Miscellaneous Receipts of Treasury TC 224
		Amend Prior Approved Expenditures TC 084/181 (R)

PUBLIC ASSISTANCE TYPE AWARDS
MATRIX OF MAJOR ACTIONS FOR AUDIT DISALLOWANCES

Audit Disallowance Action	Grant Award Action	-and-	Accounting Action
2. OPDIV holding Funds	No Award Action Re- quired (Funds were previously returned - see II b. Above) Advise State to Reduce Expendi- tures for Disallowance Sustained		Reverse Contingent Payable - Audit Disallowance TC 503 (R) Reestablish Firm Accounts Recei- vable - Audit Disallowance TC 335 Record Collection TC 345 Amend Prior Approved Expenditures TC 084/181 (R)
c. Board <u>Reduces</u> Disallowance 1.State Holding Funds	Issue Supplemental Award - Decreasing funds (For DAB Upheld Amount Plus Interest TC 050 (R) (A portion of prior expendi- tures were not correct) Advise State to Adjust Expenditu- tures in Line DAB Decision.		Reverse Accounts Receivable - Anti- cipated Recovery - Audit Disallowance (For Entire Amount of Audit Disallow- ance) TC 333 (R) Reestablish Firm Ac- counts Receivable - Audit Disallowance (For GAB Upheld Amount plus Interest) TC 335 and TC 139 Record Collection of the Disallowance TC 345 Disburse Interest from Appropriation and Deposit to Miscella- neous Receipts of Treasury TC 190 and TC 224

PUBLIC ASSISTANCE TYPE AWARDS
 MATRIX OF MAJOR ACTIONS FOR AUDIT DISALLOWANCES

Audit Disallowance Action	Grant Award Action	-and- Accounting Action
		Amend Prior Approved Expenditure for the amount disallowed. TC 084/181 (R)
2. OPDIV Holding Funds	Issue Supplemental Award Increasing Funds (In Line with DAB Decision) (Returning funds (III b) for por- tion of prior expenditures sustained) Advise State to Adjust Expenditu- res (In Line with DAB Decision)	Reverse Contingent Payable - Audit Disallowance (For Entire Amount of Audit Disallowance) TC 503 (R) Reestablish Firm Ac- counts Receivable - Audit Disallowance (For portion of Audit Disallowance Upheld by DAB) TC 335 Record Collection of the Disallowance TC 345 Amend Prior Approved Expenditures for the Amount Disallowed TC 084/181(R)

NOTE: OPDIV must determine what documentation will be used to support accounting transactions, other than those specified in the detailed procedures.

ACCOUNTING PROCEDURES FOR PUBLIC ASSISTANCE

AUDIT DISALLOWANCES

Receipt of the Audit Clearance Document

The Finance Office will be notified of an audit disallowance when it receives an Office of Inspector General Clearance Document (OCD) from the Audit Liaison Office (ALO). The OCD will show three dollar amounts: (1) the amount recommended for financial adjustment in the audit report, (2) the amount sustained and (3) the amount determined by the reviewing official to be owed. The latter of these three figures is the amount the finance office should record in their accounting system.

The determination document (demand letter) should accompany the OCD. The audit disallowance should be promptly recorded in the accounting system in accordance with OMB Circular A-50 provisions. In recording the receivable identified to a specific grant or contract that number should be entered in the "obligation document" field and the determination document number should be entered in the "other document" field. If the determination document does not have a number the OCD number should be used.

OPDIVs have the option of recording the audit disallowance as a current collectible item, general ledger account 1335, or as an anticipated recovery, general ledger account 1333, pending possible appeal action. These procedures are written to initially record as an anticipated recovery and to reclassify as a firm receivable when the program participant chooses not to appeal or, upon appeal, when the Departmental Appeals Board (DAB) rules in favor of the audit determination. Procedures should be adjusted when the OPDIV initially records as a firm receivable (1315) and reclassifies as an anticipated recovery (1316) when the program participant appeals the disallowance action.

To enter the audit disallowance into the accounting system, the Finance Office should use TC 333. This action will have the following effect on the general ledger accounts.

- (1) TC 333
O.C. 25, 41

DEBIT	1316	Anticipated Recoveries - Audit Disallowance
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CREDIT	1319	Allowance for Loss on Accounts Receivable - Unfunded
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This entry provides control over the audit disallowance prior to and during the appeal stage.

Program Participant Does Not Appeal Audit Disallowance

If the program participant does not exercise his right of appeal within 30 days from the date of the receipt of the determination letter, the ALO should notify the Finance Office in writing of this fact. The Finance Office should use this notification as the source document to make entries to change the anticipated recovery to a firm receivable.

- (2) TC 333 (R) (to cancel anticipated recovery)
O.C. 25, 41

DEBIT	1319	Allowance for Loss on Accounts Receivable - Unfunded
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CREDIT	1316	Anticipated Recoveries - Audit Disallowances
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-and-

- (3) TC 335 (A) (to establish firm receivable)
O.C. 25, 41

DEBIT	1315	Audit Disallowances Receivable
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CREDIT	6101	Operating/Program Expense
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Note: (A) entry only of TC 335 is applicable when OPDIV uses TC 345 for recovery of the receivable.

-and-

- (4) TC 050 (R) (to decrease current funds for the recovery)
O.C. 25, 41

DEBIT	4800	Undelivered Orders
CREDIT	4612	Allowances Available for Commitment/ Obligation

-and-

- (5) TC 345 (to record the recovered receivable)
O.C. 25, 41

DEBIT	6101	Operating/Program Expense
CREDIT	1315	Audit Disallowances Receivable

-and-

- (6) TC 084 (R) or TC 181 (R)(B) according to OPDIV procedure for recording expenditures or cash disbursements from PMS - to amend previously recorded expenditures for amount of disallowance taken and recovered.

DEBIT	4900	Expanded Appropriations
CREDIT	4800	Undelivered Orders

Note : (B) entry only of TC 084 (R) and 181 (R) is shown to shorten the procedures.

Program Participant Appeals Audit Disallowance - Opts to Retain Funds
Pending Resolution by DAB

No accounting entries are required as the status remains as an anticipated recovery of the audit disallowance. When the program participant does not exercise his option to return the disputed funds, the Finance Office will accrue interest for the Medicaid program beginning on the date of the disallowance until the date of the DAB decision or the date the participant agrees with the disallowance action. Interest is computed as prescribed in Section 1903 (d)(5) of the Social Security Act. For other programs, the interest will accrue beginning on the date of the disallowance action at the rate prescribed in 45 CFR subparts 30.13 and 30.14. In addition to interest, penalties and administrative costs may be added. Although charges are accruing as described, recordation will be retroactive following a sustained decision by the DAB.

Program Participant Appeals Audit Disallowance - Opts to Return Funds
Pending Resolution by DAB

If within 30 days the program participant appeals the reviewing officials decision, the ALO should notify the Finance Office of this fact in writing. The same rules apply as for program disallowances, the program participant has the option of returning the disputed funds to the OPDIV pending resolution by the DAB. The action is usually taken to avoid the interest that will have accrued if the disallowance is sustained. Audit officials must notify the Finance Office in writing of this decision. The document will support the entries to change the record from an anticipated recovery to a contingent payable. An additional entry must be made to record the reduction of a current award or the issuance of a negative award for the recovery of funds.

- (7) TC 333(R) (to cancel anticipated recovery)
O.C. 25, 41

DEBIT	1319	Allowance for Loss on Accounts Receivable - Unfunded
CREDIT	1316	Anticipated Recoveries - Audit Disallowances

-and-

- (8) TC 503 (to establish a contingent payable)
O.C. 25, 41

DEBIT	6905	Other Expenses - Unfunded
CREDIT	2920	Contingent Liabilities - Unfunded

-and-

- (9) TC 050(R) (to hold funds of current award pending DAB
decision on the appeal))
O.C. 25, 41

DEBIT	4800	Undelivered Orders
CREDIT	4612	Allowances Available for Commitment/ Obligation

Disallowance Appeal Sustained by DAB (Program Participant Holding Funds)

When the audit disallowance appeal is sustained and prior approved expenditures are reaffirmed by the DAB, the ALO must notify the Finance office in writing of this fact. This will be a copy of the Appeals Board notification supported by the amended OCD as soon as it is released. Since the participant had opted to retain the disputed funds, no adjustment to the award is required. An entry is needed to cancel the anticipated recovery of the disputed funds.

- (10) TC 333(R) (to cancel anticipated recovery)
O.C. 25, 41

DEBIT	1319	Allowance for Loss on Accounts Receivable - Unfunded
CREDIT	1316	Anticipated Recoveries - Audit Disallowances

The amended OCD documentation should be used as the source document for this entry, and should be placed with other documents for this disallowance in a closed file.

Disallowance Appeal Sustained by DAB (OPDIV Holding Funds)

When the audit disallowance appeal is sustained and prior approved expenditures are reaffirmed by the DAB, the ALO must notify the Finance Office in writing of this fact. This will be a copy of the Appeals Board notification supported by the amended OCD as soon as it is released. Since an earlier award was adjusted to recover the amount in dispute, a current award must be increased or a supplemental award issued. Entries must be made to record the reobligation of funds and to cancel the contingent liability that was established pending resolution of the appeal.

- (11) TC 503(R) (to cancel the contingent payable)
O.C. 25, 41

DEBIT	2920	Contingent Liabilities - Unfunded
CREDIT	6905	Other Expenses - Unfunded

-and-

- (12) TC 050 (to reobligate current funds previously
O.C. 25, 41 withdrawn pending DAB decision)

DEBIT	4612	Allowances Available for Commitment/ Obligation
CREDIT	4800	Undelivered Orders

Disallowance Appeals Denied by DAB (Program Participant Holding Funds)

When the audit disallowance appeal is denied and the DAB reaffirms its determination that prior approved expenditures were not correct, the ALO must notify the Finance Office in writing of this fact. This may be a copy of the Appeals Board notification. Since the participant opted to retain the disputed funds during the appeal process, entries are required: (1) to compute and record the actual interest at the applicable rate (see section Program Participant Appeals Audit Disallowance - Opts to Retain Funds Pending Resolution by DAB) and any applicable penalties and administrative charges levied, (2) to change the anticipated recovery to a firm receivable, (3) to record the collection of the receivables and reduce a current award or issue a negative award for a like amount, (4) to transfer the amount recovered from the program appropriation to the Miscellaneous Receipts account for the amount of the interest, and (5) to reduce the previously recorded approved expenditures to reflect the disallowance taken and recovered.

- (13) TC 139 (for computation of actual interest)
O.C. 61.48 Accrued Interest Earned - Audit Disallowance

DEBIT	1324	Accrued Interest on Gen/Tr Fund Receipts Receivable
CREDIT	5302	Interest Revenue Earned - Gen/Tr Fund Receipts

-and-

- (14) TC 333 (R) (to cancel anticipated recovery)
O.C. 25, 41

DEBIT	1319	Allowance for Loss on Accounts Receivable - Unfunded
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CREDIT	1316	Anticipated Recoveries - Audit Disallowances
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- (15) TC 335 (A) (to establish firm receivable)
O.C. 25, 41

DEBIT	1315	Audit Disallowances Receivable
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CREDIT	6101	Operating/Program Expense
--------	------	---------------------------

-and-

- (16) TC 050 (R) (to decrease current funds for the recovery
of disallowance and accrued interest and
charges, if applicable)
O.C. 25, 41

DEBIT	4800	Undelivered Orders
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CREDIT	4612	Allowances Available for Commitment/ Obligation
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-and-

- (17) TC 345 (to record the recovered receivable)
O.C. 25, 41

DEBIT	6101	Operating/Program Expense
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CREDIT	1315	Audit Disallowances Receivable
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-and-

- (18) TC 190 (to disburse interest to be transferred to
Miscellaneous Receipts)
O.C. 25, 41

DEBIT 6101 Operating/Program Expense

CREDIT 1012 Disbursements (Other than Payroll)

-also-

DEBIT 4612 Allowances Available for
Commitment/Obligation

CREDIT 4900 Expended Appropriations

-and-

- (19) TC 224 (record collection (deposit) of interest
O.C. 61.7D (Interest Collected - Audit and Program
Disallowance)

DEBIT 3620 Funds Returned to Gen/Tr Funds -
Miscellaneous Receipts

CREDIT 1324 Accrued Interest on Fund Receipts
Receivable

-and-

- (20) TC 084 (R) (B) or TC 181 (R)(B) according to OPDIV procedure for
recording expenditures or cash disbursements - to amend
previously recorded expenditures for amount of disallowance
taken and recovered

DEBIT 4900 Expended Appropriations

CREDIT 4800 Undelivered Orders

Disallowance Appeal Denied by DAB (OPDIV Holding Funds)

When the audit disallowance appeal is denied and the DAB reaffirms its determination that prior approved expenditures were not correct, the ALO must notify the Finance Office in writing of this fact. This may be a copy of the Appeals Board notification. Since an earlier award was adjusted to recover the amount in dispute pending the appeals process entries are required (1) to change the contingent payable to a firm receivable, (2) record the receivable as collected, and (3) to reduce the previously recorded approved expenditures to reflect the disallowance taken and recovered.

- (21) TC 503 (R) (cancel the contingent payable)
O.C. 25, 41

DEBIT 2920 Contingent Liabilities - Unfunded

CREDIT 6905 Other Expenses - Unfunded

-and-

- (22) TC 335 (A) (to establish firm receivable)
O.C. 25, 41

DEBIT 1315 Audit Disallowances Receivable

CREDIT 6101 Operating/Program Expense

-and-

- (23) TC 345 (to record the recovered payable)
O.C. 25. 41

DEBIT 6101 Operating/Program Expense

CREDIT 1315 Audit Disallowances Receivable

-and-

- (24) TC 084 (R)(B) or TC 181 (R)(B) according to OPDIV procedure for recording expenditures or cash disbursements - to amend previously recorded expenditures for amount of disallowance taken and recorded.

DEBIT 4900 Expended Appropriations

CREDIT 4800 Undelivered Orders

Disallowance Reduced by DAB (Program Participant Holding Funds)

When the DAB reduces a portion of the audit disallowance under appeal and sustains the remaining sum, the entries are the same as in the section Disallowance Appeal Denied by DAB (Program Participant Holding Funds) except that the recovery of interest, TCs 139, 190 and 224, is based upon the lowered disallowance amount. The TC 333 (R) is for the original amount of the disallowance, TCs 335 and 345 are for the recoverable reduced amount, TC 050(R) is for the amount to be recovered plus the interest, and TC 084(R) is for the amount of the reduction to prior recorded expenditures.

Disallowance Reduced by DAB (OPDIV Holding Funds)

In this instance when the disallowance has been adjusted by the DAB, the entries are similar to those in the Section Disallowance Appeal Denied by DAB (OPDIV Holding Funds). The TC 503(R) is for the original amount of the disallowance and TCs 335, 345 and 084(R) are for the reduced amount to be recovered. An additional entry is required to record the supplemental award issued for funds previously returned by the participant for the portion of prior expenditures that were sustained.

(25) TC 050 (To reobligate current funds previously withdrawn
pending DAB decision)
O.C.,. 25, 41

DEBIT	4612	Allowances Available for Commitment/Obligation
CREDIT	4800	Undelivered Orders

OTHER THAN PUBLIC ASSISTANCE TYPE AWARD

MATRIX OF MAJOR ACTIONS FOR AUDIT DISALLOWANCES

Audit Disallowance Action	Accounting Action
I. Audit Determination Issuance of OCD/ Determination Letter	Record Accounts Receivable - Anticipated Recovery - Audit Disallowance TC 333
II. No Appeal Participant Chooses Not to Appeal	Reverse Accounts Receivable- Anticipate Recovery - Audit Disallowance TC 333(R) Establish Firm Accounts Receivable - Audit Disallowance TC 335
III. Appeal Action Participant Appeals	No action Required (Status Remains at TC 333 Anticipated Recovery)
IV. Departmental Appeals Board Action	
a. Board <u>Sustains</u> Participant's Appeal	-Reverse Accounts Receivable- Anticipated Recovery - Audit Disallowance TC 333 (R)
b. Board <u>Denies</u> Partici- pant's Appeal	Reverse Accounts Receivable- Anticipated Recovery Audit Disallowance TC 333(R) Establish Firm Accounts Receivable - Audit Disallowance TC 335
c. Board <u>Reduces</u> Disallowance	Reverse Accounts Receivable- Anticipated Recovery Audit Disallowance (for Entire amount of disallowance) TC 333(R) Establish Firm Receivable - Audit Disallowance (for DAB upheld amount) TC 335

OTHER THAN PUBLIC ASSISTANCE TYPE AWARD

MATRIX OF MAJOR ACTIONS FOR AUDIT DISALLOWANCES

Audit Disallowance Action	Accounting Action
	Record Collection of Financing Interest TC 224 Record Collection of Delinquent Accounts TC 248
V. Charging Interest	
a. Financing Interest	
- Accrue Interest on Anticipated Recovery	Record Accrual TC 139
- Bill Interest - No Appeal or Disallowance Sustained	Reverse Anticipated Interest TC 139(R) Bill Actual Interest TC 139
- Cancel Anticipated Interest - Appeal Sustained	Reverse Anticipated Interest TC 139(R)
- Reduce Interest and Bill Upon Negotiated Settlement	Reverse Anticipated Interest TC 139(R) Bill Actual Interest TC 139
b. Delinquent Interest, Penalty, and Adminis- trative Charges	Accrue and Bill for the Delinquent Accounts TC 148
VI. Collection	
a. By OPDIV/Agency/Region (Check)	For Audit Disallowance TC 236 For Financing Interest TC 224 For Delinquent Interest, Penalty and Administrative Charges TC 248
b. By OPDIV/Agency/Region (offset)	Disburse Funds Against Current Grant Recorded as Payable to Participant TC 186 Record Collection of Audit Disallowance Amount Reverting to Appropriation TC 236 Record Collection of Audit Disallowance Amount Reverting to Miscellaneous Receipts of Treasury TC 236

OTHER THAN PUBLIC ASSISTANCE TYPE AWARD

MATRIX OF MAJOR ACTIONS FOR AUDIT DISALLOWANCES

Audit Disallowance Action	Accounting Action
	Record Collection of Financing Interest TC 224
	Record Collection of Delinquent Accounts TC 248
c. By DFAF (Reducing Award Expenditures through the PMS)	
- Open Awards	After verification that Reports 272 reflects adjusted expenditures, cancel the Audit Disallowance Receivable TC 335(R)
- Closed Awards	Transmit deobligating/closing transaction to DFAF TC 059
Program Office issues a Downward Adjusting Award	After verification that Report 272 reflects adjusted expenditures, cancel the Audit Disallowance Receivable TC 335(R)
d. By Lead Agency (Cross-cutting Awards)	Record Collection to Miscellaneous Receipts of Treasury TC 236
	Issue SF 1081 for any identifiable portion to other Agency
VII. Allowance for Loss and Write-offs	
a. Disallowance	Establish Allowance for Loss TCs 110 and 116
	To Write-offs as Uncollectible TC 113 or 11B
	To Cancel/Forgive TC 109
b. Interest	Establish Allowance for Loss TC 112 or 11A
	To write-off as Uncollectible TCs 118 & 128
	To Cancel/Forgive TC 109

NOTE: OPDIV must determine what documentation will be used to support accounting transactions, other than those specified in the detailed procedures.

ACCOUNTING PROCEDURES
FOR OTHER THAN PUBLIC ASSISTANCE PROGRAMS
AUDIT DISALLOWANCE

Receipt Of The Office of Inspector General Clearance Document (OCD)

The audit disallowance should be promptly recorded in the accounting system in accordance with OMB circular A-50 provisions. In recording the receivable identified to a specific grant or contract that number should be entered in the "obligation document" field and the determination document number should be entered in the "other document" field. If the determination document does not have a number the OCD number should be used. For systems disallowances a unique number, which might be the audit report number, should be recorded in the "obligation document" field.

To enter the audit disallowance into the accounting system, the Finance Office should use TC 333. This action will have the following effect on the general ledger accounts.

- (1) TC 333
O.C. 25, 41, 61.76
- | | | |
|--------|------|--|
| DEBIT | 1316 | Anticipated Recoveries - Audit Disallowances |
| CREDIT | 1319 | Allowance for Loss on Accounts Receivable - Unfunded |

This entry provides control over the audit disallowance prior to and during the appeal stage. Selection of the object class will depend whether the audit disallowance is specifically identified by grant or contract number. If the audit disallowance is identified by grant or contract number then the appropriate object class in either the 25 or 41 series should be used. If the audit disallowance is not specifically identified by grant or contract number then object class 61.76 should be used.

Program Participant Does Not Appeal Audit Disallowance

If the program participant does not exercise his right of appeal within 30 days from the date of the receipt of the determination letter, the ALO should notify the Finance Office in writing of this fact. The Finance Office should use this notification as the source document to make two entries. The first entry will reverse TC 333 for the amount initially recorded. This entry will appear as:

(2) TC 333(R)
O.C. 24, 41, 61.76

DEBIT	1319	Allowance for Loss on Accounts Receivable - Unfunded
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CREDIT	1316	Anticipated Recoveries - Audit Disallowances
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The second entry should use TC 335 for the amount of the audit disallowance to be billed and collected. This entry will appear as:

(3) TC 335
O.C. 25, 41, 61.76 (for disallowance identified by grant or contract)

DEBIT	1315	Audit Disallowances Receivable
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CREDIT	6101	Operating/Program Expense
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-and-

DEBIT	4900	Expended Appropriations
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CREDIT	4612	Allowances Available for Commitment/Obligation
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-or-

(for system-type disallowance)

DEBIT	1315	Audit Disallowances Receivable
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CREDIT	5901	Miscellaneous Revenue - Gen/Tr Fund Receipts
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Program Participant Appeals Audit Disallowance

If within the 30 days the program participant appeals the reviewing officials decision, the ALO should notify the Finance Office of this fact in writing. This notification of appeal should not result in the recording of any accounting entry.

Instead, the notification should be placed in the same file as the OCD which initially established the receivable in the 1316 account. (Refer to page 8 for accounting entries to record accrual of interest until an amount under appeal or litigation is resolved.)

Departmental Appeals Board (DAB) Resolution of Audit Disallowances

Under the appeal process a program participant can expect one of three possible outcomes:

1. The Board sustains the participant's appeal of the disallowance.
2. The Board denies the participant's appeal of the disallowance.
3. The Board reduces the disallowance.

Each one of these possible outcomes is described below with its appropriate accounting entries.

1. DAB Sustains the Participant's Appeal

If the audit disallowance amount is overruled, the ALO must notify the Finance Office in writing of this fact. This will be a copy of the Appeals Board notification supported by the amended OCD as soon as it is released. The Finance Office should use this notification as a source document to record a TC 333(R) for the dollar amount of the audit disallowance under appeal. This action will affect the general ledger accounts accordingly:

(4) TC 333(R)
O.C. 25, 41, 61.76

DEBIT	1319	Allowance for Loss on Accounts Receivable - Unfunded
CREDIT	1316	Anticipated Recoveries - Audit Disallowances

The documentation notifying the Finance Office of the overruling of the audit disallowance should be used as the source document for the above entry and also placed with the rest of the documents for this disallowance in a closed file.

2. DAB denies the Participant's Appeal

If the audit disallowance amount is sustained, the ALO must notify the Finance Office in writing of this fact. This may be by a copy of the Appeals Board notification. The Finance Office, using this notification as a source document, will record two accounting entries. The first entry will be a TC 333(R) for the dollar amount under appeal. This action will affect the general ledger account as follows:

- (5) TC 333(R)
O.C. 25, 41, 61.76

DEBIT	1319	Allowance for Loss on Accounts Receivable - Unfunded
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CREDIT	1316	Anticipated Recoveries - Audit Disallowances
--------	------	---

The second entry which is required uses TC 335 for the amount of the audit disallowance sustained. This action affects the general ledger accounts as follows:

- (6) TC 335
O.C. 25, 41, 61.76 (for disallowance identified by grant or contract)

DEBIT	1315	Audit Disallowances Receivable
-------	------	--------------------------------

CREDIT	6101	Operating/Program Expense
--------	------	---------------------------

-and-

DEBIT	4900	Expended Appropriations
-------	------	-------------------------

CREDIT	4612	Allowances Available for Commitment/ Obligation
--------	------	--

-or-

(for system-type disallowance)

DEBIT	1315	Audit Disallowances Receivable
-------	------	--------------------------------

CREDIT	5901	Miscellaneous Revenue - Gen/Tr Fund Receipts
--------	------	---

This action establishes the amount of the sustained appeal in a collectible stage. The documentation notifying the Finance Office of the sustained appeal should be used as the source document to record the above transaction. This documentation should also be placed in the open document file established for that specific audit disallowance, and collection action should be initiated based upon this documentation.

3. DAB Reduces the Disallowance

If the appeal amount is reduced as a result of a negotiated settlement, the ALO must notify the Finance Office in writing of this fact. This will be a copy of the Appeals Board notification, supported by the amended OCD as soon as it is released.

The Finance Office will use this written notification as the source document to record two accounting entries. The first entry will reverse out the initial amount established in general ledger 1316 using TC 333. This entry should appear as:

(7) TC 333(R)
O.C. 25, 41. 61.76

DEBIT	1319	Allowance for Loss on Accounts Receivable - Unfunded
-------	------	---

CREDIT	1316	Audit Disallowances Receivable
--------	------	--------------------------------

(8) The second entry will establish a new account receivable using TC 335 for the amount of the reduced audit disallowance. This entry will appear as:

TC 335
O.C. 25, 41, 61.76 (for disallowance identified by grant or contract)

DEBIT	1315	Audit Disallowances Receivable
-------	------	--------------------------------

CREDIT	6101	Operating/Program Expense
--------	------	---------------------------

-and-

DEBIT	4900	Expended Appropriations
CREDIT	4612	Allowances Available for Commitment/Obligation

-or-

(for system-type disallowance)

DEBIT	1315	Audit Disallowances Receivable
CREDIT	5901	Miscellaneous Revenue - Gen/Tr Fund Receipts

The documentation sent from the ALO notifying Finance of the resolved appeal should be placed in the same file as the OCD and appeal notification. Collection action should be initiated based upon this documentation.

Option B

This option permits the OPDIV/Agency/Region Finance Offices to initially enter the audit disallowance into their accounting system as a current collectible item. This option should be exercised only if there is a reasonable indication or basis to believe the debtor will not appeal the audit determination.

Directly entering and audit disallowance with a TC 335 will affect the following general ledger accounts:

- (9) TC 335
O.C. 25, 41, 61.76 (for disallowances identified by grant or contract)

DEBIT	1315	Audit Disallowances Receivable
CREDIT	6101	Operating/Program Expense

-and-

DEBIT	4900	Expended Appropriations
CREDIT	4612	Allowances Available for Commitment/Obligation

-or-

(for system-type disallowance)

DEBIT	1315	Audit Disallowances Receivable
CREDIT	5901	Miscellaneous Revenue - Gen/Tr Fund Receipts

If an audit disallowance entered under Option B is subsequently appealed then the amounts should be reestablished in account 1316 as described in Option A.

Charging Interest

The debtor should have been advised in the determination letter that interest will accrue if the debt is not paid within thirty days and will continue to accrue until any appeals or litigations are resolved and collection is made. Also, that penalty and administrative costs may be added if the debt remains unpaid. The accounting for and recording of interest follows the same concept as that for the establishment of receivable accounts 1316 and 1315 for the audit disallowance principal. Although there is a definite requirement to accrue the interest after the initial 30 day period of notification, and to continue while an appeal/litigation is underway, the debtor should not be billed or positive collection made until the case is resolved (voluntary collections shall be accepted and deposited to the Suspense Budget Clearing Account, F3875 pending determination of the appeal). Account 1324, Accrued Interest on Gen/Tr Fund Receipts Receivable, is used to record the accrued interest. The unbilled amounts will be credited to the Allowance for Loss, account 1319, and reclassified to income, account 5302 at the time of billing.

Account 1324 is also the account to be used for the interest charged when an installment schedule has been arranged. This interest is termed "financing interest." Accounts 1331, 1333 and 1335 are used when additional interest, penalties and administrative costs are assessed because the audit principal or principal and interest is delinquent. All accounts are reported in Section A of Schedule 220.9 and the delinquent accounts are also reported in Section C of Schedule 220.9. Discussion of delinquency charges can be found at 4 CFR 102.13.

Documents that support the following entries for recording interest are the same as those mentioned earlier when recording the accounts receivable for the audit disallowance.

Accrue Interest on Anticipated Recovery

The initial accrual of financing interest is based upon the amount of the disallowance recorded in 1316 - Anticipated Recoveries - Audit Disallowance:

(10) TC 139

O.C. 61.49 Accrued Interest Earned - Pending
Appeal/Litigation)

DEBIT	1324	Accrued Interest on Gen/Tr Fund Receipts Receivable
-------	------	--

CREDIT	1319	Allowance for Loss on Accounts Receivable - Unfunded
--------	------	---

Bill Interest when there in No Appeal or Disallowance is
Sustained

When there has been no appeal of the audit disallowance or the initial amount has been sustained, the accrued financing interest amount initially recorded as on unbilled amount should be reclassified to take into the income account as follows:

(11) TC 139(R)

O.C. 61.49

DEBIT	1319	Allowance for Loss on Accounts Receivable - Unfunded
-------	------	---

CREDIT	1324	Accrued Interest on Gen/Tr Fund Receipts Receivable
--------	------	--

-and-

(12) TC 139

O.C. 61.48

DEBIT	1324	Accrued Interest on Gen/Tr Fund Receipts Receivable
-------	------	--

CREDIT	5302	Interest Revenue Earned - Gen/Tr Fund Receipts
--------	------	---

Cancel Interest when Participant's Appeal is Sustained

When the disallowance has been appealed and the appeal is sustained, the financing interest that has accrued should be canceled in its entirety as follows:

- (13) TC 139(R)
O.C. 61.49

DEBIT	1319	Allowance for Loss on Accounts Receivable - Unfunded
CREDIT	1324	Accrued interest on Gen/Tr Fund Receipts Receivable

For those using Option B, initially recording the audit disallowance in account 1315, the initial recording of financing interest in account 1324 should be at the billed stage, taking the amount directly into the income account.

Reducing Interest upon GAB Negotiated Settlement

Interest may subsequently be reduced due to the results of an appeal, in which case an entry will be made to cancel the amount which was accrued based upon the amount of the receivable in account 1316:

- (14) TC 139(R)
O.C. 61.49

DEBIT	1319	Allowance for Loss on Accounts Receivable - Unfunded
CREDIT	1324	Accrued Interest on Gen/Tr Fund Receipts Receivable

The recomputed financing interest, based upon the amount of the reduced audit receivable established in account 1315, will be entered as:

- (15) TC 139
O.C. 61.49 (Accrued Interest Earned - Audit Disallowance)

DEBIT	1324	Accrued Interest on Gen/Tr Fund Receipts
CREDIT	5302	Interest Revenue Earned - Gen/Tr Receipts Receivable

Additional Charges on Delinquent Accounts

Subsequent accrual of interest because of delinquent payments is based upon the amount of the disallowance recorded in 1315, or upon the installment that is delinquent, and delinquent interest in 1324 if applicable. Penalties and administrative costs may also be added, as follows.

- (16) TC 148
O.C. 61.4P, 61.4Q, 61.4R (Accrued Interest, Penalties
and Administrative Costs)

DEBIT	1331	Accrued Interest on Delinquent Accounts Receivable
	1333	Accrued Penalty on Delinquent Accounts Receivable
	1335	Accrued Administrative Costs on Delinquent Accounts Receivable
CREDIT	5303	Interest, Penalty and Administrative Costs Earned on Delinquent Accounts - Gen/Tr Fund Receipts

Certification Statement

A Certification Statement Exhibit 10-41-P will be sent with the Determination Letter when payment is to be by check to the OPDIV/Agency/Region Finance Office. The statement is to be completed by the program participant and returned with the check in payment for the audit disallowance and accrued interest penalty and administrative charges, if applicable. This is an important document for the government if it is later determined, through audit or compliance check, that Federal funds were used to repay the debt.

Collection by OPDIV/Agency/Region (Check)

The final action in most instances will be the collection of the amount owed. Besides depositing the check with Treasury, the Finance Office will enter the collection as shown below, depending upon whether the funds collected are associated with a given grant or contract, are not specifically identified by grant or contract, and whether interest and other charges are involved. (See page 14 for collection by offset against current year grant/contracts and page 16 for collection through PMS by reduced expenditure reporting).

Illustrated below are the various accounting entries that may be involved.

Collection of Audit Disallowance Recorded by Grant or Contract

- (17) TC 236(A)
O.C. 25, 41

DEBIT	1012	Disbursements (Other than Payroll)
CREDIT	1315	Audit Disallowances Receivable

Collections of Audit Disallowance Not Recorded by Grant or Contract

- (18) TC 236 (B)
O.C. 61.75

DEBIT	3620	Funds Returned to Gen/Tr Funds - Miscellaneous Receipts
CREDIT	1315	Audit Disallowances Receivable

Collection of Financing Interest

As financing interest is collected, either in one lump sum or in installments, these entries will be made:

- (19) TC 224
O.C. 61.7D (Interest Collected - Audit and Program
Disallowance & Delinquent Accounts)

DEBIT	3620	Funds Returned to Gen/Tr Funds and Miscellaneous Receipts
CREDIT	1324	Accrued Interest on Gen/Tr Fund Receipts <u>Collection on Delinquent Accounts</u>

(20) TC 248
O.C. 61.7D, 61.7E, 61.7F (Interest, Penalty, and
Administrative Charges
Collected - Delinquent Accounts)

DEBIT	3620	Funds Returned to Gen/Tr Funds - Miscellaneous Receipts
CREDIT	1331	Accrued Interest on Delinquent Accounts Receivable
	1333	Accrued Penalties Receivable on Delinquent Accounts Receivable
	1335	Accrued Administrative Costs on Delinquent Accounts Receivable

The signed Certification Statement (Exhibit 10-41-P) and other correspondence accompanying the payment should be included in the document file established for that audit disallowance. The absence of this document or inconsistent statements must be pursued with the program participant and the Grant/Contract Official.

Collection of Interest when Disallowance is Collected by
Reduced Disbursements through the Payment Management System
(PMS)

The OPDIV/Agency/Region Finance Office will be responsible for the collection of financing interest and additional collections on delinquent accounts relating to disallowances on awards paid through the PMS.

Interest and charges will accrue to the date that the participant is instructed to reduce cash disbursements/expenditures. A bill for the additional charges should accompany, Exhibit 10-41-Q, along with the disallowance notification. If the participant fails to take the required actions through the PMS for the collection of the disallowance principal, interest should continue to accrue.

Incremental Payments

According to Title 4 of the Code of Federal Regulations, Section 102, money owed the Federal Government can be collected in installments and interest may be charged. However, claims should be collected in one lump sum whenever possible. If the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments with part principal and part interest. The size and frequency of such installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. The installment payments shall be sufficient in size and frequency to liquidate the Government's claim in not more than three years.

The accounting treatment is no different than those described above for the billing and collection of audit disallowance paid back in one lump sum except that payments will be made over a longer period to liquidate the amount owed. Proper documentation, and installment payment agreement, must be obtained and maintained on file to show the conditions under which the installment payments are to be made and at what rate of interest, if applicable.

Collection by OPDIV/Agency/Region (By Offset Against Current Awards

In some instances the OPDIV/Agency/Region official may reach an agreement with the participant that the amount claimed for an audit disallowance will be recovered by offset from reimbursable expenditures against the current year's grant or contract. In such instances the Finance Office must remove the participant from advanced funding to a reimbursable method. The participant then must use the advanced funds, if any, and the participant's own non-Federal funds and report disbursements made until reimbursement is due for the Federal share of costs. The account payable to reflect the reimbursement voucher will be entered by a regular payable TC. The Finance Office shall

offset such reimbursement vouchers until all amounts owed on such debt have been collected. When a reimbursable voucher is due the recipient the amount to be recovered, in total or by installment, is to be applied to the receivables that were established by the OCD for the audit disallowance and applicable interest, penalty, and administrative costs. At the time the collection is recorded the amount that applies to disallowances not specifically identified by grant or contract and all amounts that apply to accrued interest, penalty, and administrative costs must be deposited to the Treasury receipt account. The reimbursement amount shall be recorded as a disbursement to liquidate the account payable. Only when a net amount is due the recipient will a check be issued to the recipient. Transactions will be recorded as follows:

Audit Disallowance Offset Against Current Grant or Contract

- (21) TC 186
O.C. 25, 41

DEBIT	2110	Accounts Payable - Non-Government
CREDIT	1012	Disbursements (Other Payroll)

After the amounts owed have been offset against the current year grant or contract, the applicable collection entry will be made as follows:

Collections Recorded by Grant or Contract for Amount Offset Against Current Grant/Contract

- (22) TC 236(A)
O.C. 25, 41

DEBIT	1012	Disbursements (Other than Payroll)
CREDIT	1315	Audit Disallowances Receivable

(23) TC 236(B)
O.C. 61.75

CREDIT	1315	Audit Disallowances Receivable
--------	------	--------------------------------

(24) TC 224

DEBIT	3620	Funds Returned to Gen/Tr Funds - Miscellaneous Receipts
-------	------	--

CREDIT	1324	Accrued Interest Receivable on Gen/Tr Fund Receipts Receivable
--------	------	---

(25) TC 248

DEBIT	3620	Funds Returned to Gen/Tr Funds - Miscellaneous Receipts
-------	------	--

CREDIT	1331	Accrued Interest Receivable on Delinquent Accounts Receivable
--------	------	--

1333	Accrued Penalties Receivable on Delinquent Accounts Receivable
------	---

1335	Accrued Administrative Costs on Delinquent Accounts Receivable
------	---

Collection by DFAF (Reducing Award Expenditures through the PMS)

Receivables at the OPDIV/Agency/Region are established as previously described using TCs 333 and 335. From this point on the procedures differ because collection can be accomplished by permitting the program participant to adjust previously reported expenditures (disbursements), and in some instances by the program office adjusting award authority. Collection procedures are as follows:

Open Award in PMS

If an award is open in the PMS the only adjusting entry will be a reduction of cash disbursement (expenditures) by the participant for the amount of the audit disallowance in the participant's records and on the next PMS Report 272 as instructed (Exhibit 10-41-Q) by the OPDIV/Agency/Region Finance Office. The Exhibit and any additional instructions should be sent to the participant as soon after receipt of notification from ALO that the audit disallowance should be collected. A copy of the Exhibit and accompanying notification should be sent to the Division of Federal Assistance Financing (DFAF) so they may follow-up to see that the participant has taken the required action.

The written notification will instruct the program participant of the required actions to close out the audit disallowance in question. When these actions have been taken the participant should return a signed copy of Exhibit 10-41-P to the applicable Finance Office, along with a check for interest and other charges, if applicable.

The Finance Office should use this letter as a source document to: (1) verify with DFAF that the next Report 272 has been adjusted by the participant as indicated on the certification portion at Exhibit 10-41-Q and (2) to record a reversal of TC 335 for the amount of the audit disallowance. If the adjustment was not made by the participant then the reversal of TC 335 should not be made and an inquiry made of the reasons why not. The reverse TC 335 would appear as follows:

- (26) TC 335(R) (amount of audit disallowance)
O.C. 25, 41

DEBIT	6101	Operating/Program Expense
CREDIT	1315	Audit Disallowances Receivable

-and-

DEBIT	4612	Allowances Available for Commitment/Obligation
CREDIT	4900	Expended Appropriations

Closed Award in PMS

If an award is closed in the PMS a different series of events must take place to record the collection. First, the OPDIV/Agency/Region Finance Office must instruct the program participant in writing, Exhibit 10-41-Q that cash disbursements (expenditures) should be adjusted downward in his/her records and on the next Report 272 to the PMS. Second, the program office should send to the finance Office a deobligation for the amount of the audit disallowance using transaction code 059. The 059 transaction should be transmitted to DFAF as soon as possible. The 059 transaction will be as follows:

- (27) TC 059(R) (Amount of the Audit Disallowance)
O.C. 25, 41

DEBIT	4800	Undelivered Orders
CREDIT	4612	Allowances Available for Commitment/Obligation

As described in "Open Award in PMS", the recipient should return a signed copy of the certification statement to Finance attesting to the fact that the required adjustments have been made.

The Finance Office should use the certification statement as the source document to: (1) verify with DFAF that the participant has made the adjustment on Report 272. If the adjustment was not promptly made and the 059 transaction was transmitted and recorded in PMS the participant's cash disbursement (expenditure) will appear to be greater than award authority on PMS records.

DFAF personnel will refer to the copy of the Exhibit 10-41-Q previously furnished them by the OPDIV/Agency/Region Finance Office and will follow-up with the participant and the appropriate Finance Office to see that proper action is taken. Regardless of the status of the cash disbursements adjustment, action will be taken by DFAF to collect the disallowance, either by cash refund or by offset.

- (28) TC 335(R) (Amount of Audit Disallowance)
O.C. 25, 41

DEBIT	6101	Operating/Program Expense
CREDIT	1315	Audit Disallowance Receivable
		-and-
DEBIT	4612	Allowances Available for Commitment/Obligation
CREDIT	4900	Expended Appropriations

Inactive Awards Removed from PMS

Once an award has been removed from the PMS, all subsequent financial actions concerning it will be accomplished by the OPDIV/Agency/Region interacting directly with the participant. Staff at the OPDIV/Agency/Region will bill the recipient and ask that payment be made directly to their Finance Office.

Collection of Cross-cutting Awards and Multiple Agencies

In cases where the audit disallowance does not specifically identify any grant or contract or the disallowance covers more than one program, Federal agency or department, the lead agency as identified in the audit report should collect the total sum of the audit disallowance directly from the participant and deposit the funds to miscellaneous receipts. If awards have been made through the PMS, no adjustment to expenditures should be made by the program participant or in the PMS for expenditures previously reported. If the audit report distributes any portion of the recovery back to a X year or multiple year appropriation which would make the recovery still

available, the designated lead agency should transfer that portion of the recovery to the affected agency or department by 1081 with appropriate explanation. At the time collection is made under the above condition, the Finance Office should record the collection with the following entry:

- (29) TC 236(B) (Collection Not Recorded by Grant or Contract)
O.C. 61.75

DEBIT	3620	Funds Returned to Gen/Tr Funds - Miscellaneous Receipts
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CREDIT	1315	Audit Disallowances Receivable
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Estimate of Audit Disallowance Uncollectible

Based upon past experience of the accounts that were not collectible or were canceled due to unusual reasons following the establishment of the billed receivable, the Finance Office will establish a percentage rate and periodically establish an allowance for the receivables recorded in Account 1315 for each applicable appropriation account as follows:

- (30) TC 110
O.C. 61.57 (for allowances established and not requiring adjustment of budgetary authority i.e. system-type disallowances)

DEBIT	6903	Bad Debt Expense - Unfunded
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CREDIT	1319	Allowance for Loss on Account Receivable - Unfunded
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-or-

- (31) TC 116
O.C. 25, 41 (For disallowances identified by grant or contract, and these allowances established to require an adjustment of budgetary authority)

DEBIT	6103	Bad Debt Expense - Funded
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CREDIT	1319	Allowance for Loss on Accounts Receivable - Funded
--------	------	---

-and-

DEBIT 4612 Allowances Available for
 Commitment/Obligation

CREDIT 4900 Expended Appropriations

Uncollectible Audit Disallowance (Write-off)

The Finance Office will attempt to collect the audit disallowance in accordance with Departmental procedures following Claims Collection procedure. Failing to collect the amount due the Finance Office will seek the advice and assistance of the ALO, the Grants Office or appropriate Program Office, and the Debt Collection Officer. In accordance with the Joint Debt Collection regulations, when a final determination is made that certain accounts can be written off according to authority residing within the Department or referred to GAO, the following entry will be made, fully documented with all actions previously taken. Claims referred to Justice may be written off when that Department notifies HHS that such action is appropriate. The entry will be as follows:

- (32) TC 11B (to write-off uncollectible accounts where
 O.C. 61.58 allowance for loss was funded)

DEBIT 1319 Allowance for Loss on Accounts
 Receivable - Funded

CREDIT 1315 Audit Disallowances Receivable

- also for Unfunded - Systems-type Audits -

TC 113
O.C. 61.53

DEBIT 1319 Allowance for Loss on Accounts
 Receivable - Unfunded

CREDIT 1315 Audit Disallowances Receivable

Audit Disallowance Redetermination (Cancellation)

If, following the appeals period and the establishment at the 1315 receivable account, the amount due on a disallowance is determined to have been incorrect (formerly called "forgiven") for any reason (by Statue, law or regulation, etc.) the Action Official or the ALO must prepare an amended OCD or similar

document and notify the Finance Office. This document will be used as a source document to record the cancellation of the receivable:

- (33) TC 109
O.C. 61.1L (Cancellation (forgiveness of audit disallowance))

DEBIT 1319 Allowance for Loss on Accounts
Receivable - Unfunded

CREDIT 1315 Audit Disallowances Receivable

Estimate of Interest Uncollectible

As the Finance Office computes the allowance for losses on the audit disallowances estimated to be uncollectible or canceled. (TCs 110 and 116) an allowance for loss should also be computed for the accrued interest, penalty, and administrative charges that may become uncollectible:

- (34) TC 112 (for financing interest)
O.C. 61.57

DEBIT 6903 Bad Debt Expense - Unfunded

CREDIT 1329 Allowance for Loss on Accrued Interest
Receivable

-or-

- TC 11A (for delinquent interest, penalty and
O.C. 61.57 administrative charge)

DEBIT 6903 Bad Debt Expense - Unfunded

CREDIT 1329 Allowance for Loss on Accrued Interest
on Delinquent Accounts

Uncollectible Interest (Write-off)

When an audit disallowance has been determined to be uncollectible and is written off (TC 11B or 113) entries should also be made to write-off any interest that has been accrued for the particular disallowance, depending upon whether the interest is recorded as financing interest or interest on delinquent accounts, and other charges due to the delinquency:

- (35) TC 118
O.C. 61.5G (Actual Bad Debt - Financing Interest -
General/Trust Fund Receipt)
- | | | |
|--------|------|---|
| DEBIT | 1329 | Allowance for Loss on Accrued Interest
Receivable - Unfunded |
| CREDIT | 1324 | Accrued Interest on Gen/Tr Fund Receipts
Receivable |

-and-

- (36) TC 128
O.C. 61.5Q, 61.5R, 61.5S (Actual Bad Debt - Interest, Penalty
and Administrative Costs on
Delinquent Accounts)
- | | | |
|--------|------|---|
| DEBIT | 1339 | Allowance for Loss on Accrued Interest,
Penalties, and Administrative Costs
Receivable - Unfunded |
| CREDIT | 1331 | Accrued Interest on Delinquent Account
Receivable |
| | 1333 | Accrued Penalties on Delinquent Accounts
Receivable |
| | 1335 | Accrued Administrative Costs on
Delinquent Accounts Receivables |

Interest Redetermination (Cancellation)

When an audit disallowance is determined to have been incorrect (formerly called forgiven), following the appeals period, any interest that has been accrued and recorded in account 1324 as applicable to the amount of debt to be written off must be canceled. The notification of the redetermination from the ALO will be used as the recording source document. For consistency in accounting procedures, cancellation is recorded the same as uncollectible accounts; a reserve is established and expended periodically and the actual write-off (cancellation) is charged to the reserve account as follows:

(37) TC 109
O.C. 61.1M (Cancellation of Interest on Audit Disallowance)

DEBIT	1329	Allowance for Loss on Accrued Interest Receivable - Unfunded
CREDIT	1324	Accrued Interest on Gen/Tr Fund Receipts Receivable

OPDIV/Agency/Region Finance Office Address

Certification

I certify that the enclosed check for audit disallowances and accrued interest was drawn from non-Federal funds and that services or benefits under current Federal grants/contracts, if applicable, will not diminish as a result of this payment.

Grant/Contract No.

or

Audit Report No. Amount

Audit Disallowance

Accrued Interest

Delinquent Interest, Penalty & Administrative Charges _____

Total \$ _____

Questions on this should be directed to _____ (Name) on
_____ (Phone) _____.

Sincerely

Name:

Name (Type):

Title:

Organization and Address:

Date

Program Participant's Name
Street Address
City, State and Zip Code

Dear _____:

Please take the following actions to close out the HHS Audit Agency Recommendations contained in report number _____ dated _____ and relative decisions.

1. Reduce your cash disbursements/expenditures.

Grant/Contract No. or Audit Control Number/CAN/Amount

2. Report the above adjustment (s) on your next PMS Report 272, Federal Cash Transactions Report, to the Division of Federal Assistance Financing.
3. Advise this Finance Office when the adjustment(s) has been made and reported to DFAF by completing the certification section on the duplicate copy of this letter and returning it to this office.

Questions on this subject should be directed to _____ (name)
on _____ (phone).

Sincerely,

*Note to OPDIV/Agency/Regional Finance Office. Modify this according to need.

CERTIFICATION SECTION

I certify that the above mentioned actions have been completed and the results will be reflected on the next Report 272 which I will submit to DFAF on _____ (Date).

- | | | | |
|-----|--|---------|------------------|
| (1) | Prior Cash Disbursement on PMS Report 272 | _____ | |
| (2) | Current Cash Disbursement this Period + | _____ | (Net of |
| (3) | Audit Disallowance | - _____ | these two |
| | | | <u>figures</u>) |
| (4) | Cash Disbursement Report on PMS Report 272 | _____ | |
| | for the period ending | _____ | |

Name _____ Title _____ Date _____

OUTLINE OF REQUIREMENTS FOR
CREDIT MANAGEMENT IMPROVEMENT PLAN

General. The purpose of the Credit Management Improvement Plan is to describe the credit management priorities of the head of the OPDIV/component in carrying out statutory program objectives in accordance with OMB Circular A-129; indicate the strategies to be employed to accomplish these priorities; and identify the specific initiatives to be implemented in accordance with the developed strategies.

Content. The plan should be developed with sections as indicated below.

I. Overview. Describe each loan program in terms of:

- o Characteristics of the debts and debtors involved;
- o Historical experience of the program and other Government agencies and the private sector in the collecting this type of debt;
- o Trend analysis of delinquencies and defaults, including guaranteed loans, from October 1, 1981 to present;
- o Planned improvements in the OPDIV/component's credit management, debt collection; and
- o Statutory prohibitions enacted or pending that may impede implementation of A-129.

II. Strategies.

Describe how loss prevention and debt collection will be improved in each element of the credit cycle - award, servicing and collection. Identify which of the nine point credit management elements and other credit initiatives will apply and when. The strategy should indicate the program direction that will be required to accomplish the credit management objectives over the next five (5) years. The strategy should link the objectives of credit management with the development of program accounting systems as proposed in accordance with OMB Circular A-127.

III. Credit Management Initiatives.

The plan will describe each of the following areas, including associated milestones and time frames.

- o Establishment of credit management and debt collection practices, procedures and regulations that implement A-129.
- o How debt collection and credit management responsibilities will be defined and assigned for each program.
- o Establishment of accounting practices and procedures and automated information systems to enable the production of accurate financial reports on these programs that generate receivables, including reports such as operating statements, statements of financial position, and cash flow statements.
- o Evaluation of credit management and debt collection operations and systems in order to identify areas for improvement and to initiate actions to correct any problems identified.

IV. Performance Goals.

- o Indicate the specific performance goals that the OPDIV/component proposes to meet each fiscal year.
- o Performances goals previously established will be evaluated and reason provided if the goals have not been met.

V. Relationship to Other OMB Circulars.

- o Circular A-11, Preparation and Submission of Budget Estimates, section 42 Debt Collection Activity and Exhibits. The development of trends in receivables, delinquent debt collection, and write offs should be reflected in the strategy and initiatives reflected in the A-129 plan.
- o Circular A-70, Policies and Guidelines for Federal Credit Programs. Plans to develop better data to estimate credit subsidies and to implement administratively and many A-70 requirements as possible should be reflected in the A-129 plan.

- o Circular A-123, Internal Control Systems. Credit Management and debt collection functions identified as Material weaknesses shall be reported in the A-129 plan along with corrective measures to eliminate the weaknesses.
- o Circular A-127, Financial Management Systems. Include by reference those sections of the five-year plan that are in support of the Credit Management Initiatives reflected in A-129.

LOAN ASSET SALES GUIDELINES

Introduction

The following guidelines for the sale of loan assets and prepayments have been established and approved by the Federal Credit Policy Working Group. The guidelines are designed to insure that agencies will meet the objectives of the loan asset sale program which have been derived from the stated priority to reform Federal credit. The guidelines are not intended to take precedence over statutory requirements. These objectives are set forth as follows:

- o reduce the Government's cost of administering credit by transferring servicing, collection, and other administrative activities to the private sector;
- o provide an incentive for agencies to improve loan origination and documentation;
- o determine the actual subsidy of a Federal credit program; and
- o increase unified budget offsetting collections in the year of sale

To ensure that agencies meet the objectives of the program and conform to standardized sales procedures, OMB has established loan asset sales and prepayment guidelines. Deviations from these guidelines require prior approval of OMB. The following guidelines shall be adhered to by each agency in its approach to, and implementation of all, loan asset sales.

- A. NON-RECOURSE SALE. Loan asset sales shall be made without future recourse to the Federal Government. For the purposes of these guidelines, recourse includes any Federal guarantee of principal or interest payments; agreements to repurchase loans or to replace delinquent loans with current loans; warranties as to collateral value; and other agreements entailing continued Federal involvement that could create contingent liability. Recourse does not include: representation and warranty obligations in accordance with Guideline B; changes in internal agency policy or regulations needed to satisfy the agency's legal obligations to borrowers; arrangements made by the purchaser of the loans to provide for credit enhancement measures (such as overcollateralization, reserve funds or insurance) that do not impose contingent liability on the agency or the government; or retention by

the Federal Government of a junior security representing a residual interest in the income produced by the loans after the sale. Agencies planning to retain a junior interest for more than 18 months or for an indefinite period must submit to OMB a plan for disposition.

- B. REPRESENTATIONS AND WARRANTIES. If necessary, agencies may include in a loan sale agreement representations and warranties to the purchaser of loan assets concerning matters of fact and law, such as the characteristics of loans, the agency's authority to sell loans, and the legal enforceability of loans and security interests. Agencies may not warrant as to the future credit-worthiness of borrowers. The duration of warranty periods will be based on reasonable time periods for verification and will be determined on a case-by-case basis. The remedy for a breach of warranty may included substitution of an alternative loan not initially included in the sale pool or cash payment by an agency up to the value of the defective loan. Each agency is responsible for ensuring that it has the resources needed to satisfy warranty obligations. Loan sale agreements incorporating warranties shall be signed by an agency official of appropriate rank and shall name the individual agency as the warrantor. The text of warranties should be reviewed by OMB and Treasury.
- C. TAX-EXEMPT FINANCING. Loans of tax-exempt entities shall be sold only if the future interest payments on the loans are subject to full Federal income tax. This does not preclude sales of securities representing pooled loans or whole loans to tax-exempt investors for portfolio or trading accounts in the normal course of business, but is meant to preclude purchases by such investors from the proceeds of tax-exempt borrowing made for that purpose. Further, the financing of prepayments of loans shall be on a taxable basis; that is, borrowers should not issue tax-exempt bonds to prepay their outstanding loan balances.
- D. CONTRACTING OUT SERVICES. Agencies should seek to contract out the servicing of loan assets prior to sale. If for valid reasons agencies are not able to do so before sale, collection and servicing shall be transferred to the purchaser with the sale of a loan asset.
- E. BUDGET LINKAGE. Agencies shall sell loans and prepare to sell loans in the amounts stated in the budget for FY 1988 and FY 1989. Agencies shall sell newly issued loans and seasoned loans from their portfolios after, approval or their sale plan.

- F. FINANCIAL CONSULTANT. Where appropriate, each agency shall choose, through a competitive process, professional financial consultant to provide expertise on its loan asset sale program. Consultants will not be permitted to purchase loans from programs on which they are advising.
- G. BID PROCESS. Loan asset sales may be conducted on a competitive bid or negotiated basis. In the latter case, the invitation to negotiate should be disseminated widely, and negotiations conducted as competitively as possible.
- H. PRE-PAYMENT. In limited circumstances where the borrower is not an individual, agencies may offer current borrowers the right to purchase their loans if that seems likely to achieve the highest price; borrowers who are not current on their principal and interest payments shall not be allowed to purchase their loans.
- I. SIZE OF SALE. Loan asset sales shall be sufficiently large to assure market interest. This is particularly important when developing markets for new types of securitized loans. In such cases, we would expect sales to be over \$100 million. Other details, including timing of sales, the composition and size of loans pools, and other marketing issues, shall be handled individually by each agency and will vary from portfolio to portfolio depending on market conditions.
- J. FEDERAL FINANCE BANK. Agencies may sell loan assets held by the FFB.
- K. SALE TO GOVERNMENT SPONSORED ENTERPRISES. Agencies should not sell loan assets directly to Government-Sponsored Enterprises or to entities acting on their behalf for their own account.
- L. SALE OF NEW LOANS. To the extent possible, newly made loans should be sold on a regular basis within six months of when the loan was closed. It is recommended that when newly made loans are scheduled for sale, agencies arrange for private servicing from the beginning. All proceeds from the sale of newly made loans will flow into the Treasury General Fund, absent legislation to the contrary.

- M. MINIMUM PRICE. In competitive bid situations agencies should be prepared to analyze bids for minimum price acceptability against an established valuation methodology. It is not likely that there will be good reason to disclose the methodology or price floors to bidders. Any such minimum price valuation methodology should be reviewed by OMB and Treasury.
- N. LEGISLATIVE IMPEDIMENTS. Agencies shall review present and proposed statutory and regulatory provisions governing loan programs and propose removal of any impediment to loan sales on a non-recourse basis. Statutory or regulatory change should be proposed in the annual credit management improvement plan required by this circular.

BUDGETARY TREATMENT OF WRITE-OFFS

1. While the financial reporting system is essentially based on accrual accounting concepts, the budget, for purposes of monitoring debt collection activities, is essentially an obligation and cash based system. As such, collections are estimated and subsequently recognized when received and expenses are estimated and subsequently recognized when paid.

2. The accounting system accrues expenses which are incurred and an item is used (such as depreciation expenses) or as a potential for loss is perceived (such as an allowance for bad debt). In an agency's accounting records, the establishment of an allowance for uncollectible accounts and a write-off do not result in cash transactions. Therefore, while the transaction affects an agency's income statement and, balance sheet, there is no corresponding effect on an agency's budgetary obligations or outlays. In the budget, the obligations were incurred when the loan contract was signed; the outlays were made when the disbursement of the loan funds occurred; and cash collections of the repayments were estimated taking into consideration uncollectible amounts.

3. The act of writing-off bad debt itself should have no impact on the budget if estimates of receipts for future years have properly taken into account expected losses. The realization that anticipated receipts will not materialize may have an effect on the budget if the level estimated of receipts did not accurately reflect those losses.

4. Loss of revenue has the most impact on the operations of a revolving fund. A revolving fund disburses loans from a pool of funds composed of repayments of loan principal, interest payments, or borrowing from the Department of the Treasury. If projected income to the fund fails to materialize, a fund's capital base will begin to erode. Decreased capital may adversely affect a fund's financial condition, possibly reducing the fund to insolvency. In these cases, a fund can:

- Borrow more money from Treasury, if it has the legal authority to do so;
- Seek appropriations to recapitalize the fund; or
- Absorb the loss and decrease its level of activity.

5. Requests for appropriations to reimburse a fund for its losses or restore withdrawn balances must be reviewed by OMB through the normal budget process.

6. Because of these conceptual differences in financial versus budgetary accounting entries, an increase in write-offs for a program or fund would adversely affect its financial condition; however, it should not affect the level of budgetary resources as long as collections have been estimated accurately. A change in loans receivable or an increase in write-offs does not affect the level of budgetary resources for a loan program. Loan limitations, enacted in appropriations acts, determine the size of a loan program and are independent of the means of financing.

7. Therefore, since write-offs do not directly affect an agency's budget totals, there is no direct budgetary impact which an agency must consider when writing-off its receivables.

MODEL RISK RATINGS

Purpose

Accounts should be rated with respect to risk to permit OPDIVS/components to estimate the probability of repayment. Consistently applied, the procedure permits evaluation of portfolios of loans, and the targeting of collection resources.

Introduction

While there are numerous rating systems used in the private sector, most are comparable to the Comptroller of the Currency system that follows. Because the Government is often "the lender of last resort," a much higher proportion of loans will have to be classified as high risk, but the Government should be able to understand the degree of risk among loans as well as any changes in that level of risk. The following ratings provide the basis for assigning risk ratings to such loans.

Consumer Loans

Consumer loans are usually given three ratings.

- o Problemless: Loans on which payment is being made consistent with the terms of the agreement.
- o Substandard: Closed-end consumer installment credit past due between 90 and 119 days (4 monthly payments).
- o Loss: Closed-end consumer installment credit past due 120 days or more (5 monthly payments).

Commercial Loans

For commercial and industrial loans, the risk rating system also includes at least one problemless loan classification plus a modified version of the Comptroller of the Currency classifications of criticized assets. These are defined as follows:

- o Other Assets Especially Mentioned (OAEM) or Program Standard: Assets in this category are potentially weak, but may meet minimum program standards for credit-worthiness. Those assets constitute a credit risk but not to the point of justifying a classification of substandard. The credit risk may be relatively minor yet

constitute an unwarranted risk in light of the circumstances surrounding a specific asset. As OAEM classification should not be used as a compromise between problemless and substandard loan ratings.

Other assets especially mentioned have potential weaknesses that may, if not checked or corrected, weaken the asset or inadequately protect the lenders' credit position at some future date. Assets that might be included in this category are those that the lending officer may be unable to supervise properly because of a lack of expertise, an inadequate loan agreement, the condition of, adequacy of, and control over collateral, failure to obtain proper documentation or any other deviations from standard lending practice.

- o This category should not be used to list assets that bear risk usually associated with the particular type of financing. Any type of asset, regardless of collateral, financial stability and responsibility of the borrower involves certain risks. A credit secured by accounts receivable has a certain risk, but to criticize such a credit it must be evident that the risk is increasing beyond the original expected risk. A rapid increase in receivables without the lender knowing the causes, concentrations that lack proper credit support, lack of on-site audits, or to other similar matters could lead the lender to question the quality of the receivables and classify the loans as OAEM. Assets in which actual, not potential, weaknesses are evident and significant should be considered for more serious criticism.
- o Substandard Assets: A substantial asset is inadequately protected by the current worth and paying capacity of the borrower or of the collateral pledged, if any. Assets so classified must have a well-defined weakness or weaknesses that jeopardize the liquidation of the debt. They are characterized by the distinct possibility that the lender will sustain some loss if the deficiencies are not corrected. Loss potential while existing in the aggregate amount of substandard assets, does not have to exist in individual assets classified substandard.
- o Doubtful Assets: An asset classified doubtful has all the weaknesses inherent in one classified substandard with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values highly questionable and improbable. The

possibility of loss is extremely high, but because of certain important and reasonably specific pending factors which may work to the advantage and strengthening of the asset, its classification as an estimated loss is deferred until its more exact status may be determined. Pending factors include proposed merger, acquisition, or liquidation procedures, capital injection, perfecting liens on additional collateral and refinancing plans.

- o Loss: Assets classified this way are considered uncollectible and of such little value that their continuance as assets is not warranted. This classification does not mean that the asset has absolutely no recovery or salvage value, but rather it is not practicable or desirable to defer writing off this basically worthless asset even though partial recovery may be effected in the future.

OFFICE OF INSPECTOR GENERAL CLEARANCE DOCUMENT

PURPOSE

An Office of Inspector General Clearance Document (OCD) is the means by which OPDIV/STAFFDIV officials report the management decisions and actions taken on recommendations in Office of Inspector General (OIG) reports. OCDs are used as the source document by the Office of Audit Services, OIG to clear the report recommendations from the Stewardship Report.

The OCD is used to process OIG recommendations pertaining to financial adjustments, nonmonetary or procedural issues, the final disposition of accounts receivable, and funds put to better use. The original OCD is generally prepared to report the management decisions taken on all OIG recommendations, including any monetary recoveries to be made, during the initial six month period. The final OCD is used to report the final management action on an accounts receivable, i.e., final collection, offset against other obligated funds or write-off. Amended OCDs will not be prepared for periodic collections on an installment payment agreement.

Below is an explanation of the information contained in Part I, Part II, and Part III of the OCD form.

PART I - MONETARY AND/OR NONMONETARY

Part I of the OCD should be completed by the designated OPDIV/STAFFDIV resolution official to document and report management decisions on financial adjustment recommendations in OIG reports. Part I should also be used to report management decisions on related nonmonetary recommendations in these reports. The date at the top right should reflect the date the OCD was sent to the OIG.

A. General Information

1. **Original or Amended** - Preparer indicates by checking the appropriate box whether the OCD is reporting an original management decision or an amended management decision.
2. **Page__of__** - This indicates how many pages comprise all recommendations.
3. **Followup** - Preparer indicates by checking "yes" or "no" whether any of the nonmonetary recommendations require future actions for complete implementation.

4. **Report Identification Number** - Number assigned by the OIG to the report.
5. **Issue Date** - Date audit report was issued.

B. Report Information

1. **Cognizant OPDIV** - A cognizant OPDIV/STAFFDIV will be assigned for each report.
 - a. The cognizant OPDIV/STAFFDIV will be responsible for coordinating the resolution action between the involved OPDIV/STAFFDIV. When Grant and Contract Financial Management is the cognizant STAFFDIV, it will be responsible for coordinating the resolution of cross-cutting issues in accordance with GAM Chapter 1-105-80.
 - b. Each OPDIV/STAFFDIV is responsible for issuing an OCD to clear assigned findings and submitting it to the OIG.
2. **Other OPDIV/STAFFDIV** - All OPDIV/STAFFDIVs other than the cognizant OPDIV/STAFFDIV involved in the report.
3. **Program** - Program covered by report. In those instances where more than one program is covered, the program with the largest amount of funds is to be identified. Where the report covers Research, Training and Demonstration grants, the program designation should be RT&D.

C. Auditee Information

1. **Name and City/State and ZIP Code** - Name and location of audited organization.
2. **Grant and/or Contract Nos.** - Grant and/or contract numbers for the period audited, where applicable.
3. **Common Accounting Number** - For monetary recommendations, the common accounting number for the organizational entity that made the original obligation should be used.
4. **Appropriation Number** - For monetary recommendations, show the appropriation number for the program from which the original obligation was made.

5. **Cognizant Finance Officer** - Name and location of finance office to receive OCD Part I and Part II, "*Final Disposition of Accounts Receivable*."

D. Monetary Information

1. **Recommendation Code** - Enter the OIG code for the recommendation. Because of the flexibility of this form, this section can be expanded to include all monetary recommendation codes on this page.
2. **Recommended Amount** - This column contains the amount for the recommendation code. Recommendations for financial adjustments include the following:
 - a. Costs questioned in the report. Costs may be questioned because of an alleged violation of a law, regulation or terms of the grant or contract.
 - b. Costs were not supported by adequate documentation or the appropriate approvals had not been obtained.
3. **Sustained Amount** - The amount sustained is the amount determined by the OPDIV/STAFFDIV to be collected and/or offset. This amount must be equal to the total financial adjustment that the OPDIV/STAFFDIV determines necessary. The total financial adjustment is comprised of the amount established as an accounts receivable including amounts collected prior to issuance of the OCD, the amount to be offset against future grant awards, and amounts for which other allowable costs were substituted. The sustained amount can be higher or lower than the OIG recommended amount but not because of a collection or offset or substitution made prior to issuance of the OCD. These type of collections are recorded in the adjusted column and result in a reduction to the account receivable amount. Any difference between the Recommended and Sustained Amounts must be thoroughly explained in the "Actions Taken on Recommendation" section of the OCD.

In those instances in which the OIG has not identified an amount to be recovered, e.g., made a "nonmonetary" recommendation that the OPDIV/STAFFDIV action official determine the amount of overpayment and initiate

recovery, the amount of the recovery determined by the action official should be shown in the sustained column. The amount recommended column should be left blank.

4. **Adjusted Amount** - This column should indicate the plus or minus (+ or -) changes to the Sustained Amount as the result of additional documentation or other findings prior to establishing the amount of the Accounts Receivable. Adjustments may also result from the assessment of interest and penalties. Where there is an adjustment, a cross-referenced explanation must be provided in the "Actions Taken on Recommendation" section of the OCD.
5. **Accounts Receivable Amount**¹ - The amount equal to the Sustained Amount plus or minus (+ or -) the adjustments should be recorded in this column. When a check has been received for any portion or all of the disallowance prior to issuance of the initial OCD, the Accounts Receivable Amount will equal (1) the Sustained Amount less the amount of the check or (2) zero because the full amount was refunded. Part II of the OCD must be completed in those cases where the Accounts Receivable Amount is zero due to prior collections.

E. **Audit Recommendation Codes and Description**

1. Enter the recommendation code assigned by OIG.
2. Describe briefly the auditors' recommendation being acted upon. This can be readily ascertained by stating the recommendation as it appears in the report. If additional space is needed, complete the OCD Part I continuation sheet.

F. **Actions Taken on Recommendation**

For each recommendation being addressed the OPDIV/STAFFDIV should enter the recommendation code or number, indicate concurrence or nonconcurrence with the recommendation by placing a C or N in the C/N column and provide a brief explanation of the actions taken to resolve the recommendations. The C/N column must contain a C or an N to indicate concurrence or nonconcurrence with the recommendation. If additional space is

¹ The report identification number and auditee information on PART II should be completed and forwarded to only the designated OPDIV/STAFFDIV finance official.

needed, complete the OCD Part I (or Part III) continuation sheet.

The OPDIV/STAFFDIV may attach a copy of its draft and/or final comments to the OCD in lieu of the explanation however, both the recommendation code or number and concurrence/nonconcurrence block must be filled out for each recommendation on which a management decision is being reported.

G. **Signatures²**

1. **Originating Official and Approving Official** - To assure the OIG that an OCD represents the official position of the OPDIV/STAFFDIV, the OCD should be signed by the originating official and countersigned by an approving official at least one level above the originating official. These signatures in accordance with GAM 1-105 **must be obtained** prior to distribution to the OIG. The date signed must be recorded next to the signature.
2. **Office of General Counsel (OGC) Clearance** - The OPDIV/STAFFDIV should obtain OGC clearance whenever a disagreement with a recommendation is based on an interpretation of a law, rule, or regulation which is different than the interpretation used by the OIG to support the recommendation.
3. **Decision/Disallowance Letter** - A copy of the decision/disallowance letter must accompany the OCD. OCD's received without the decision/disallowance letter will be returned by the OIG.

H. **Submission and Distribution**

The OIG should receive an OCD when the initial management decision is made or amended. A copy of the decision/disallowance letter **must be attached to the OCD** and distributed as follows:

<u>Recipient</u>	<u>No. of Copies</u>
<u>Office of Audit Services Reports:</u>	
Director, Audit Policy and Operations	3

² Signatures should only be shown on page one of a multi-page OCD.

OIG Office of Audit Services
Room 5700, Cohen Building
330 Independence Avenue, S.W.
Washington, D.C. 20201

Office of Evaluation and
Inspections Reports:

Director, Program Evaluation 3
OIG, Office of Evaluation and
Inspections
Room 5660, Cohen Building
330 Independence Avenue, S.W.
Washington, D.C. 20201

Cognizant OPDIV/STAFFDIV 1
Finance Office (for all collections,
Part II and an Audit Determination
Letter) 1

Other OPDIV/STAFFDIVs involved 1

Regional Director
(decentralized program only) 1

PART II - FINAL DISPOSITION OF ACCOUNTS RECEIVABLE

Part II of the OCD should only be completed if an amount was recorded in the Accounts Receivable column of Part I or the amount was zero as a result of a collection that appears in the Adjusted column. These collections and receivables must be recorded to provide data necessary for debt management and the IG Act Amendment's reporting purposes. In these cases the finance official is responsible for completing Part II of the OCD although Part I does not indicate there is an accounts receivable. The designated OPDIV/STAFFDIV officials are responsible for completing the following information.

A. General Information

1. **Final** - The OPDIV/STAFFDIV finance official indicates by checking this box that the Account Receivable Amount has been reduced to zero.
2. **Report Identification Number** - The OPDIV/STAFFDIV resolution official completed this space.
3. **Report Information** - This section was completed by the OPDIV/STAFFDIV resolution official.

B. **Accounts Receivable Amount and Date Established**

The OPDIV/STAFFDIV finance office should enter the amount and date the receivable is recorded on the books. In the case of the amount of the Accounts Receivable column of Part I being zero as a result of a collection that appears in the adjusted column of Part I, that collection/adjustment is to be recorded instantaneously as an accounts receivable and a collection.

C. **Offset Amount**

1. The OPDIV/STAFFDIV should record in this column the amount collected through offset against their own grants or other OPDIV/STAFFDIV/Agency grants. In these instances the grant document must be referenced with an explanation provided in the "Final Action Taken/Documentation/Justification" section of the OCD.
2. In certain instances the offset will be made against future grants or by indirect cost rate adjustments. This part of the OCD should be prepared when the action on the future offset has occurred. An explanation should be provided in the "Final Action Taken/Documentation/Justification" section as to the specific grant or rate adjustment.
3. **Offset Amount-Interest** - Departmental policies require interest be applied to offset amounts and the interest should be included in the offset amount. Where interest is not to be applied, an explanation should be provided in the "Final Action Taken/Documentation/Justification" section.

D. **Collected Amount**

1. The OPDIV/STAFFDIV should enter in this column the amount of cash that was collected from the auditee as a result of the established accounts receivable.
2. **Collected Amount-Interest** - Interest, penalties and administrative cost transactions should also be annotated when the action occurs. These costs should be applied prior to any reductions in principal.

E. **Write Off Amount**

The OPDIV/STAFFDIV should enter the amount that was written off. The OPDIV/STAFFDIV must provide an explanation that cites the

authority for the write off along with the name of the authorizing official in the "Final Action Taken/Documentation/Justification" section.

F. **Final Action Taken/Documentation/Justification**

The OPDIV/STAFFDIVs should provide a brief explanation on the final actions taken on the receivable.

G. **Finance Official**

This space must be signed by the OPDIV/STAFFDIV financial official. The finance official is certifying that the Account Receivable Amount has been reduced to zero.

H. **Submission and Distribution**

The final OCD must be completed and distributed for all reports which required a collection action. Part I and II must be provided to the following:

<u>Recipient</u>	<u>No. of Copies</u>
OIG Office of Audit Services or OIG Office of Evaluation and Inspections	3 3
Cognizant OPDIV/STAFFDIV	1
Other OPDIV/STAFFDIVs involved	1

PART III - FUNDS PUT TO BETTER USE

Part III of the OCD should be completed to document and report management decisions on "funds put to better use" recommendations in OIG reports. Part III should also be used to report related non-monetary recommendations in these reports. The designated OPDIV/STAFFDIV resolution official is responsible for completing Part III.

A. **Purpose**

Part III should be used for resolving recommendations by the OIG that funds could be used more efficiently if management of an organization took actions to implement and complete the recommendation. Included in this category of recommendations are reductions in outlays; avoidance of unnecessary expenditures identified in preaward audits; deobligations of funds; and other savings specifically identified.

B. **General Information**

See instructions for Part I.

C. **Amount of Funds Put to Better Use**

1. **Recommendation Code (OAS reports) or Report Identification Number (OEI reports)** - Enter the recommendation code or the report identification number for the audit recommendation.³
2. **Amount Recommended** - The amount shown in the report which relates to the recommendation should be shown here.
3. **Savings/Cost Avoidance** - In this column the OPDIV/STAFFDIV should indicate the "savings" or "cost avoidance" which should be realized when the recommendation is implemented and should equal the amount to be reported on the IG Act Amendments Semi-Annual report.
 - a. If the OPDIV/STAFFDIV agrees with the recommendation, the amount sustained will generally equal the amount recommended.
 - b. If the OPDIV/STAFFDIV action official does not agree that implementation of the recommendation will produce "savings" in the amount shown in the report, the OPDIV/STAFFDIV should enter its estimated amount or zero. A full explanation of the difference should be provided in the "Actions Taken on Recommendation" section of the OCD.

D. **Audit Recommendation Codes and Description**

1. Enter recommendation code (OAS reports) or identification number (OEI reports) assigned by OIG.

³The Office of Evaluation and Inspections does not assign individual recommendation codes. The "recommendation code" section of the form may be left blank for OEI reports. OCDs submitted to OEI should clearly indicate the report identification number as a reference.

2. Describe briefly the audit recommendation being acted upon. This can be readily ascertained by stating the recommendation as it appears in the report. If additional space is needed, complete the OCD Part III continuation sheet.

E. **Actions Taken on Recommendation**

This space has been provided for the OPDIV/STAFFDIVs to make required explanations of actions taken and justification. It also provides space for cross referencing to documentation or additional pages for required explanations. If additional space is needed, complete the OCD Part III continuation sheet.

F. **Signatures**

1. **Originating Official** - To assure the OIG that an OCD represents the official position of the OPDIV/STAFFDIV, the OCD should be signed and dated by the originating official.
2. **Approving Official** - To assure the OIG that the OCD represents the official position of the OPDIV/STAFFDIV, the OCD should be countersigned and dated by an approving official at least one level above the originating official.

G. **Submission and Distribution**

The OCD must be completed and distributed as follows:

<u>Recipient</u>	<u>No. of Copies</u>
<u>Office of Audit Services Reports:</u>	
Director, Audit Policy and Operations	3
OIG Office of Audit Services	
Room 5700, Cohen Building	
330 Independence Avenue, S.W.	
Washington, D.C. 20201	

<u>Office of Evaluation and</u> <u>Inspections Reports:</u> Director, Program Evaluation OIG, Office of Evaluation and Inspections Room 5660, Cohen Building 330 Independence Avenue, S.W. Washington, D.C. 20201	3
Cognizant OPDIV/STAFFDIV	1
Other OPDIV/STAFFDIVs involved	1
Regional Director (decentralized program only)	1

AUDIT RESOLUTION RESPONSIBILITIES

Resolution responsibilities are shared by the OPDIVs, STAFFDIVs and the OIG. When decisions are made on recommendations in a final report, OPDIVs are required to prepare an OCD explaining management decisions made. The OPDIV's or STAFFDIVs audit liaison official at the appropriate Headquarters or Regional level is responsible for document control, assuring that all OCDs contain the proper accounting identification data, and that copies are **(or have been)** sent to the appropriate Finance Office on the same day that they are sent to the OIG.

Additional information with respect to the OPDIVs and STAFFDIVs specific responsibilities for resolution of OIG recommendations are contained in Chapter 1-105 of the HHS Grants Administration Manual, Chapter 8-30 of the HHS General Administration Manual and Chapter 10-41 of the Departmental Accounting Manual.

Chapter 1-105 contains detailed information on matters such as:

- o Scope of Resolutions
- o Timeliness of Resolutions
- o Documentation to be Maintained
- o Resolution of Management and System Deficiencies
- o Resolution of Monetary Findings
- o Preaward Audits

o Coordination of Cross-Cutting Issues and

Chapter 8-30 specifies the steps to be taken to resolve conflicts between OIG and OPDIV on an OIG internal report. It also prescribes the format to be used in raising issues to the Department's Audit Follow-up Official i.e., the ASMB and the Conflict Resolution Counsel.

Chapter 10-41, Credit and Debt Management, of the Departmental Accounting Manual covers responsibilities and activities relating to collection and accounting for disallowances and recoveries.

AMENDMENTS AND APPEALS

Usually management decisions reported, actions taken, or in process are final. However, cases arise in which an auditee appeals a decision by an OPDIV and an administrative appeal is granted. When this occurs and the appeal decision changes what the OPDIV reported in the original OCD, the OPDIV is required to submit an amended OCD for those items which have been changed. The amended OCD should state the nature of the change and how it affects the original OCD. Distribution, format, and all instructions for the preparation of the original OCD apply to any amendments. The amended OCD is to be checked off on the amended block in the upper left hand corner of each page.

The Departmental Grant Appeals Board, or other such office responsible for rendering a decision on an appeal, will notify the appropriate Audit Liaison Office of its decision. The Audit Liaison must, in turn, notify the appropriate Finance Office and the OIG when an appeal is completed and a decision rendered. A copy of the decision should be attached to the amended OCD.

NOTE; Amended OCD's must be submitted to the OIG for all changes to the sustained amount, both increases and decreases. OIG Act Amendment, Debt Management and other external reports are adversely affected when all changes are not reported and properly recorded in our systems.

OIG CLEARANCE DOCUMENT DATE _____

PART I - Monetary [] and/or Nonmonetary []

Original [] Amended [] Page _____ of _____

Followup Yes [] No []

Report Identification Number _____ Issue Date _____

Cognizant OPDIV _____ Program _____

Other OPDIVs _____

Auditee Name & City/State/ZIP _____

Grant/Contract Nos. _____

Common Accounting No. _____ Appropriation No. _____

Cognizant Finance Officer _____

Amounts Recommended for Financial Adjustment:

<u>Recomdation</u> <u>Code</u>	<u>Recommended</u> <u>Amount</u>	<u>Sustained</u> <u>Amount</u>	<u>Adjusted</u> <u>Amount</u>	<u>Acct. Receivable</u> <u>Amount*</u>
_____	\$ _____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____	\$ _____
	\$ _____	\$ _____	\$ _____	\$ _____

(*Complete Part II, Final Disposition of Accounts Receivable)

Recommendation Codes and Description:

(code) _____

(code) _____

Actions Taken on Recommendation:

(code) (C/N) _____

(code) (C/N) _____

Distribution

OIG
Cognizant OPDIV
Finance Office
Other

Originating Official, Date

OGC Clearance, Date

Approving Official, Date

Page _____ of _____

Report Identification Number_____

(code)	
(code)	
(code)	
(code)	

(code)	(C/N)	
(code)	(C/N)	
(code)	(C/N)	
(code)	(C/N)	

OIG CLEARANCE DOCUMENT

PART II - Final Disposition of Accounts Receivable

Final []

Report Identification Number_____ **Date**_____

Cognizant OPDIV_____ **Program**_____

Other OPDIVs_____

Auditee Name & City/State/ZIP_____

Grant/Contract Nos._____

Common Accounting No._____ **Appropriation No.**_____

Accounts Receivable Amount & Date Estab.	Offset Amount	Collected Amount	Writeoff Amount
\$ _____	\$ _____	\$ _____	\$ _____

Recommendation Code Description: REFER TO ATTACHED OCD DATED _____
FOR MONETARY RECOMMENDATION CODE DESCRIPTION AND ACTION TAKEN.

Final Action Taken/Documentation/Justification:

Finance Official, Date

Distribution

OIG

Cognizant OPDIV/STAFFDIV

Other

OIG CLEARANCE DOCUMENT
PART III - Funds Put to Better Use
(Use for resolving reports)

Original [] Amended [] Page _____ of _____

Followup Yes [] No []
Report Identification Number _____ Date _____
Cognizant OPDIV _____ Program _____
Other OPDIVs _____
Auditee or Report Name _____
Grant/Contract Nos. _____
Common Accounting No. _____ Appropriation No. _____

Amount of Funds Put to Better Use:

<u>Recommendation Code</u>	<u>Amount Recommended</u>	<u>Savings/Cost Avoidance</u>
_____	\$ _____	\$ _____
_____	_____	_____
_____	_____	_____
	\$ _____	\$ _____

Recommendation Codes and Description:

_____	_____
(code)	_____

_____	_____
(code)	_____

Actions Taken on Recommendation:

_____	_____	_____
(code)	(C/N)	_____

_____	_____	_____
(code)	(C/N)	_____

Distribution
OIG
Cognizant OPDIV
Other

Originating Official, Date

Approving Official, Date

OIG CLEARANCE DOCUMENT
PART III - Funds Put to Better Use

Page _____ of _____

(Continuation sheet)

Report Identification Number _____

Recommendation Codes and Description:

_____ (code)	_____ _____ _____ _____
_____ (code)	_____ _____ _____ _____
_____ (code)	_____ _____ _____ _____
_____ (code)	_____ _____ _____ _____

Actions Taken on Recommendations:

_____ (code)	_____ (C/N)	_____ _____ _____ _____
_____ (code)	_____ (C/N)	_____ _____ _____ _____
_____ (code)	_____ (C/N)	_____ _____ _____ _____
_____ (code)	_____ (C/N)	_____ _____ _____ _____